



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

18 March 2021*

(Reference for a preliminary ruling – Indirect taxation – VAT – Directive 2006/112/EC – Intra-Community acquisition of goods – Deduction of input tax payable on such an acquisition – Procedural requirements – Substantive requirements – Period within which the tax declaration must be submitted – Principles of fiscal neutrality and proportionality)

In Case C-895/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Wojewódzki Sąd Administracyjny w Gliwicach (Regional Administrative Court, Gliwice, Poland), made by decision of 4 November 2019, received at the Court on 4 December 2019, in the proceedings

A.

v

Dyrektor Krajowej Informacji Skarbowej,

other party:

Rzecznik Małych i Średnich Przedsiębiorców,

THE COURT (Ninth Chamber),

composed of N. Piçarra, President of the Chamber, S. Rodin and K. Jürimäe (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- A., by M. Bielawski, doradca podatkowy,
- the Rzecznik Małych i Średnich Przedsiębiorców, by P. Chrupek, radca prawny,
- the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: Polish.

– the European Commission, by M. Siekierzyńska and J. Jokubauskaitė, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 167 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('the VAT Directive').
- 2 The request has been made in proceedings between A. and the Dyrektor Krajowej Informacji Skarbowej (Director of National Tax Information, Poland) ('the tax authority') concerning the deduction of input value added tax (VAT) payable on intra-Community acquisitions.

Legal context

EU law

- 3 Under Article 2(1)(b)(i) of the VAT Directive:

'The following transactions shall be subject to VAT:

...

- (b) the intra-Community acquisition of goods for consideration within the territory of a Member State by:
 - (i) a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Articles 282 to 292 and who is not covered by Articles 33 or 36'.

- 4 Article 68 of that directive provides:

'The chargeable event shall occur when the intra-Community acquisition of goods is made.

The intra-Community acquisition of goods shall be regarded as being made when the supply of similar goods is regarded as being effected within the territory of the relevant Member State.'

- 5 Article 69 of that directive provides:

'In the case of the intra-Community acquisition of goods, VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time.'

- 6 Under Article 167 of the VAT Directive:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

7 Article 168 of the VAT Directive provides:

‘In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

...

(c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);

...’

8 Article 178 of that directive provides:

‘In order to exercise the right of deduction, a taxable person must meet the following conditions:

...

(c) for the purposes of deductions pursuant to Article 168(c), in respect of the intra-Community acquisition of goods, he must set out in the VAT return provided for in Article 250 all the information needed for the amount of VAT due on his intra-Community acquisitions of goods to be calculated and he must hold an invoice drawn up in accordance with Sections 3 to 5 of Chapter 3 of Title XI;

...’

9 Under Article 179 of the directive:

‘The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

However, Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12, exercise their right of deduction only at the time of supply.’

10 Article 180 of the VAT Directive is worded as follows:

‘Member States may authorise a taxable person to make a deduction which he has not made in accordance with Articles 178 and 179.’

11 Article 181 of the VAT Directive provides:

‘Member States may authorise a taxable person who does not hold an invoice drawn up in accordance with Sections 3 to 5 of Chapter 3 of Title XI to make the deduction referred to in Article 168(c) in respect of his intra-Community acquisitions of goods.’

12 Article 182 of that directive provides:

‘Member States shall determine the conditions and detailed rules for applying Articles 180 and 181.’

13 Under the first paragraph of Article 222 of that directive:

‘For supplies of goods carried out in accordance with the conditions specified in Article 138 or for supplies of services for which VAT is payable by the customer pursuant to Article 196, an invoice shall be issued no later than on the fifteenth day of the month following that in which the chargeable event occurs.’

14 The first paragraph of Article 273 of the VAT Directive provides:

‘Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.’

Polish law

15 Article 86 of the ustawa o podatku od towarów i usług (Law on the tax on goods and services), of 11 March 2004 (Dz. U. of 2018, item 2174), in the version applicable to the dispute in the main proceedings (‘the Law on VAT’), provides:

‘1. In so far as the goods and services are used to conduct taxed transactions, the taxable person shall have the right to deduct the amount of input tax from the amount of tax due. ...

...

10. The right to deduct the amount of input tax from the amount of tax due shall arise when a return is drawn up for the period in which the tax liability arose in relation to the goods and services acquired or imported by the taxable person.

10b. The right to deduct the amount of input tax from the amount of tax due in the cases referred to in:

...

(2) paragraph (2)(4)(c) shall arise pursuant to paragraph 10, provided that the taxable person:

- (a) receives an invoice for the delivery of the goods which, for that person, constitutes an intra-Community acquisition of goods, in the three months following the end of the month during which the tax liability arose in relation to the acquired goods;
- (b) includes the amount of tax due on the intra-Community acquisition of goods in the tax declaration in which he is required to pay that tax, within three months following the end of the month in which the tax liability arose in relation to the acquired goods,

...

10i. Where the taxable person includes the amount of tax due in the tax declaration in which he is required to pay that tax at a date subsequent to that laid down in paragraph 10b)(2)(b) and (3), the taxable person may increase the amount of input tax accordingly in the return for the accounting period in respect of which the period for submitting a tax declaration has not yet expired.

...

13. Where the taxable person has not deducted the amount of input tax from the amount of tax due within the periods referred to in paragraphs 10, 10d, 10e and 11, he may reduce the amount of the tax due by adjusting the tax declaration for the period in which the right to deduct the amount of tax due arose, but must do so within five years from the beginning of the year in which the right to deduct the amount of tax due arose, subject to paragraph 13a.

13a. Where the taxable person, for the purposes of an intra-Community acquisition of goods or supply of goods or services, in respect of which, under Article 17, the taxable person is the purchaser of goods and services, has not deducted the amount of input tax from the amount of tax due within the periods referred to in paragraphs 10 and 11, he may deduct the amount of tax due by adjusting the tax declaration for the period in which the right to deduct the tax due arose, but must do so within five years from the end of the year in which the right to deduct arose.'

- 16 The wording of Article 86(10b)(2)(b) of the Law on VAT stems from a legislative amendment which entered into force on 1 January 2017. By that amendment, the words 'within three months following the end of the month in which the tax liability arose in relation to the acquired goods' were inserted into that provision. Prior to that date, that provision did not refer to any time limit. By that same amendment, paragraph 10i was added to Article 86 of that law.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 17 A. is a company which, in the course of its economic activity, makes purchases including intra-Community acquisitions of goods in Polish territory. It uses those goods for transactions which are subject to VAT in that territory.
- 18 A. submitted a request to the tax authority for a tax ruling relating to the following situation. In certain circumstances, it claimed that it is unable to record the VAT due on intra-Community acquisitions in the tax declaration submitted within a three-month period following the end of the month during which the tax liability arose in relation to the acquired goods. In that case, it would record that VAT after the expiry of that period by adjusting its tax declaration. Such a situation would arise from late receipt of an invoice, incorrect classification of the transaction by A. or a mistake on the part of the person drawing up the records and VAT declarations.
- 19 Specifically, A. asked the tax authority whether it could, in such a situation, deduct the input VAT due on an intra-Community acquisition of goods during the same accounting period as that during which the VAT due was declared, even if it had adjusted the VAT declaration after the three-month period provided for in Article 86(10b)(2)(b) of the Law on VAT. According to A., this question should be answered in the affirmative, because that provision lays down an additional requirement to the conditions set out in the VAT Directive to which the right of deduction is subject, and it is contrary to the principles of fiscal neutrality and proportionality.
- 20 It is apparent from the file before the Court that, on 27 December 2018, the tax authority adopted a binding tax ruling that the three-month period provided for in Article 86(10b)(2)(b) of the Law on VAT does not restrict the right of deduction and therefore cannot be regarded as incompatible with the VAT Directive or with the principles of fiscal neutrality and proportionality. Moreover, according to that ruling, Article 178 of the VAT Directive authorises Member States to impose procedural conditions on the right of deduction, such as that three-month period.

- 21 A. brought an action before the referring court, the Wojewódzki Sąd Administracyjny w Gliwicach (Regional Administrative Court, Gliwice, Poland), seeking the annulment of that tax ruling. In support of its action, it claimed that Article 86(10b)(2)(b) of the Law on VAT is incompatible with Articles 167 and 178 of the VAT Directive and with the principles of fiscal neutrality and proportionality.
- 22 The referring court has doubts as to whether Article 86(10b)(2)(b) of the Law on VAT is compatible with EU law.
- 23 It specifies that, since 1 January 2017, that provision lays down a new condition relating to time limits, according to which the benefit of the right of deduction is subject to submission of a tax declaration within a three-month period following the end of the month during which the tax liability relating to the acquisition of the goods arose. Once that period has expired, the taxable person must adjust the declaration submitted previously and can deduct the input VAT due on the intra-Community acquisition of goods only for the ongoing period, in accordance with Article 86(10i) of the Law on VAT. In so doing, the taxable person would thus bear the economic burden of the VAT due and, as the case may be, the payment of interest.
- 24 According to the explanatory memorandum relating to that legislative amendment, it is intended to allow for improvement in the review of intra-Community trade, in respect of which irregularities had been found, and the reverse charge of VAT.
- 25 The referring court also points out that Article 86 of the Law on VAT establishes a five-year limitation period for the adjustment of VAT due, whereas that article provides for two limitation periods in respect of the exercise of the right of deduction, that is to say, first, a three-month period for calculating that tax and, second, a limitation period of five years. That limitation period might, in its view, create difficulties in the light of EU law.
- 26 According to the referring court, it is apparent from the Court's case-law that Member States can, in principle, provide for time limits on the exercise of the right of deduction, provided that they comply with the principles of equivalence and effectiveness. In addition, such time limits must not infringe the principle of fiscal neutrality and must be proportionate, in the sense that they do not introduce excessive procedural requirements in relation to the objectives pursued and do not impose an economic burden on the taxable person. In order to assess whether those principles have been observed, the reasons giving rise to the delay in the tax declaration should be taken into consideration, whether those reasons are independent of the taxable person or whether they reflect errors attributable to that taxable person.
- 27 In the present case, the referring court stresses that, on the one hand, the establishment of a three-month limitation period, the duration of which appears to be, in principle, sufficient, is such as to encourage compliance on the part of the taxable person, while combating the abuse of rights. Thus, that period is intended to prevent situations in which, where the amount of input VAT is equal to that of VAT due, taxable persons might use late adjustment opportunities for the purposes of tax optimisation and abuse of rights. On the other hand, however, there are situations in which the taxable person would not be in a position to comply with that three-month period, in particular where the invoice was issued late or improperly or in the case of irregularities attributable to postal operators. Article 86(10b)(2)(b) of the Law on VAT, however, does not make any distinction according to the good faith of the taxable person.

- 28 That court concludes that Articles 167 and 178 of the VAT Directive should be interpreted as precluding national legislation, such as Article 86(10b)(2)(b) of the Law on VAT, in so far as that three-month period applies to a taxable person acting in good faith.
- 29 In those circumstances, the Wojewódzki Sąd Administracyjny w Gliwicach (Regional Administrative Court, Gliwice, Poland) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 167 of [the VAT Directive], in conjunction with Article 178 thereof, ... be interpreted as precluding national legislation which makes the exercise of the right to deduct input tax in the same accounting period as that in which the tax due was payable on the transactions constituting [intra-Community] acquisitions of goods subject to entry of the tax due on those transactions in the appropriate tax declaration submitted within the mandatory period (in Poland, three months) following the end of the month in which the tax liability arose in relation to the goods and services acquired?’

Consideration of the question referred

- 30 By its question, the referring court asks, in essence, whether Articles 167 and 178 of the VAT Directive must be interpreted as precluding national legislation which makes the exercise of the right to deduct VAT payable on an intra-Community acquisition in the same accounting period as that in which the VAT is due subject to entry of the VAT due in the tax declaration submitted within a three-month period following the end of the month in which the tax liability arose in relation to the goods acquired.
- 31 As a preliminary point, it should be borne in mind that, in the context of intra-Community acquisitions, under the reverse charge procedure, no VAT payment takes place between the person acquiring the goods and the supplier of those goods, the former being liable, in respect of the intra-Community acquisitions made, for input VAT, while being able, in principle, to deduct that tax so that no tax is payable to the tax authorities (see, to that effect, judgment of 11 December 2014, *Idexx Laboratories Italia*, C-590/13, EU:C:2014:2429, paragraph 33).
- 32 According to the Court’s settled case-law, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation (judgments of 11 December 2014, *Idexx Laboratories Italia*, C-590/13, EU:C:2014:2429, paragraph 30 and the case-law cited, and of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 26 and the case-law cited). As the Court has repeatedly held, the right of deduction is an integral part of the VAT scheme and in principle may not be limited (judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 37 and the case-law cited).
- 33 The deduction system is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all of his economic activities. The common system of VAT therefore ensures that all economic activities, whatever their purpose or results, provided that they are in principle themselves subject to VAT, are taxed in a neutral way (judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 27 and the case-law cited).

- 34 Under Article 167 of the VAT Directive, a right to deduct input VAT arises at the time when the deductible tax becomes chargeable. According to Article 69 of that directive, in the case of the intra-Community acquisition of goods, VAT becomes chargeable on issue of the invoice, or on expiry of the period referred to in the first paragraph of Article 222 of that directive if no invoice has been issued by that time.
- 35 Moreover, the right to deduct VAT is subject to compliance with the substantive and formal conditions laid down by the VAT Directive (see, to that effect, judgment of 26 April 2018, *Zabrus Siret*, C-81/17, EU:C:2018:283, paragraph 35).
- 36 The substantive conditions that must be met in order for the right to deduct VAT due on intra-Community acquisitions of goods to arise, pursuant to Article 2(1)(b)(i) of the VAT Directive, are listed in Article 168(c) of that directive. Those conditions stipulate that those acquisitions must have been effected by a taxable person, that that person must also be liable for the VAT payable on those acquisitions, and that the goods in question must be used for the purposes of that person's taxable transactions.
- 37 The formal requirements governing the right to deduct VAT, by contrast, regulate the rules governing its exercise and monitoring thereof and the smooth functioning of the common system of VAT, such as the obligations relating to accounts, invoicing and filing returns (judgment of 11 December 2014, *Idexx Laboratories Italia*, C-590/13, EU:C:2014:2429, paragraph 42).
- 38 With regard to VAT due on intra-Community acquisitions, it is apparent from Article 178(c) of the VAT Directive that the exercise of the right of deduction is subject to the condition that the taxable person has set out in the VAT return provided for in Article 250 of that directive all the information needed for the amount of VAT due on his intra-Community acquisitions of goods to be calculated and that he holds an invoice drawn up in accordance with Sections 3 to 5 of Chapter 3 of Title XI of the VAT Directive.
- 39 Moreover, in accordance with the first paragraph of Article 179 of the VAT Directive, the deduction is to be made by subtracting from the total amount of VAT due for a given accounting period the total amount of VAT 'in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178'.
- 40 It follows, according to the Court's case-law, that the right to deduct VAT must in principle be exercised in respect of the period during which, first, the right has arisen and, second, the taxable person is in possession of an invoice (see, to that effect, judgments of 29 April 2004, *Terra Baubedarf-Handel*, C-152/02, EU:C:2004:268, paragraph 34, and of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 35).
- 41 Thus, the right of deduction is generally exercised during the same period as that during which it has arisen, that is to say, having regard to Article 167 of the VAT Directive, at the time when the tax becomes chargeable (see, to that effect, judgment of 26 April 2018, *Zabrus Siret*, C-81/17, EU:C:2018:283, paragraph 36).
- 42 Nevertheless, pursuant to Articles 180 and 182 of the VAT Directive, a taxable person may be authorised to make a deduction even if he did not exercise his right during the period in which that right arose, subject to compliance with certain conditions and procedures determined by

national legislation (judgments of 12 July 2012, *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 46 and the case-law cited, and of 26 April 2018, *Zabrus Siret*, C-81/17, EU:C:2018:283, paragraph 37).

- 43 In that regard, Member States may adopt, under Article 273 of the VAT Directive, measures to ensure the correct collection of VAT and to prevent evasion. Such measures, however, must not go further than is necessary to attain such objectives and must not undermine the neutrality of VAT (judgments of 12 July 2012, *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 47 and the case-law cited, and of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 47 and the case-law cited).
- 44 In the present case, according to the national legislation at issue in the main proceedings, the right to deduct VAT payable on an intra-Community acquisition arises on condition that, within a three-month period following the month during which the tax liability arose in relation to the goods acquired, the taxable person, first, receives an invoice for the delivery of the goods which, for that person, constitutes an intra-Community acquisition of goods and, second, includes the amount of the tax due on that acquisition in the tax declaration in which that person is required to calculate that tax. If those elements are not mentioned in the declaration submitted within that period, the taxable person may still adjust his declaration within a five-year period from the end of the year in which the right to deduct the amount of VAT due in relation to an intra-Community acquisition arose. In that case, the taxable person must calculate retroactively the VAT due in relation to that acquisition, whereas he can deduct the VAT due on that acquisition only for the ongoing tax period.
- 45 In that regard, first, in so far as such legislation appears to make the very origin of the right of deduction subject to the conditions of obtaining an invoice and of submitting a tax declaration, it should be noted that, having regard to paragraphs 34 and 36 of the present judgment, the origin of the right of deduction may be made subject only to the substantive conditions laid down in the VAT Directive, which, in respect of an intra-Community acquisition, are listed in Article 168(c) of that directive. By contrast, it is not necessarily dependent on obtaining an invoice, submitting a tax declaration and calculating the VAT due on such an acquisition within a specific period.
- 46 Second, national legislation, such as that described in paragraph 44 of the present judgment, may have the consequence that the calculation of an amount of VAT payable and of the same amount of VAT deductible, in relation to a single intra-Community acquisition, will not take place within the same tax period, irrespective of the circumstances in that case, the good faith of the taxable person and the reasons for the late declaration of the VAT due on such an acquisition. The application of that legislation delays, by reason of the mere failure to have regard to a procedural condition, the exercise of the right to deduct VAT payable on intra-Community acquisitions. Thus, it results in the burden of VAT being temporarily borne by the taxable person.
- 47 However, it is apparent from the Court's settled case-law that, in the context of the reverse charge procedure, the fundamental principle of VAT neutrality requires deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. Consequently, where the tax authority has the information necessary to establish that the substantive requirements have been satisfied, it cannot, in relation to the right of that taxable person to deduct that tax, impose additional conditions which may have the effect of rendering that right ineffective for practical purposes (judgments of 12 July 2012, *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 62 and the case-law cited, and of 11 December 2014, *Idexx Laboratorios Italia*, C-590/13,

EU:C:2014:2429, paragraphs 38 and 40 and the case-law cited). The position may be different if non-compliance with such formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been satisfied (judgments of 12 July 2012, *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 71 and the case-law cited, and of 11 December 2014, *Idexx Laboratories Italia*, C-590/13, EU:C:2014:2429, paragraph 39).

- 48 Moreover, it must be noted that the requirement, recalled in paragraph 41 of the present judgment, that the right of deduction is generally exercised during the same period as that during which the tax has become chargeable is such as to safeguard fiscal neutrality. It makes it possible to guarantee that VAT is accounted for and deducted during the same period, with the result that the taxable person is relieved entirely of the VAT due or paid in the course of all his economic activities (see, to that effect, judgment of 29 April 2004, *Terra Baubedarf-Handel*, C-152/02, EU:C:2004:268, paragraphs 35 to 37).
- 49 It would be contrary to that logic to impose temporarily on the taxable person the burden of the VAT due in respect of an intra-Community acquisition, all the more so since, as is apparent from paragraph 31 of the present judgment, no amount is payable to the tax authority in relation to such an acquisition.
- 50 As a result, and subject to the substantive conditions governing the right to deduct VAT being met – which is a matter for the referring court to verify – the application of national legislation cannot prevent, automatically and on account of the failure to have regard to a procedural requirement, the exercise of the right to deduct VAT due on an intra-Community acquisition during the same period as that during which the same amount of VAT was calculated, without all the relevant circumstances being taken into account, including the good faith of the taxable person.
- 51 No other conclusion can be derived from the Court’s case-law, according to which Member States can provide, on grounds of legal certainty, for a period the expiry of which has the effect of penalising a taxable person who has not been sufficiently diligent and has failed to claim deduction of input tax, by causing him to forfeit his right to deduct, in so far as, first, that period applies in the same way to analogous rights in tax matters founded on domestic law and to those founded on EU law (principle of equivalence) and, second, that it does not in practice render impossible or excessively difficult the exercise of the right of deduction (principle of effectiveness) (see, to that effect, judgment of 26 April 2018, *Zabrus Siret*, C-81/17, EU:C:2018:283, paragraph 38 and the case-law cited).
- 52 It follows from the matters set out in paragraphs 44 and 46 of the present judgment that the three-month period established by the national legislation at issue in the main proceedings, for the purposes of the declaration of the VAT payable on an intra-Community acquisition, cannot be regarded as being tantamount to a limitation period, within the meaning of that case-law, entailing the loss of the right to deduct.
- 53 That being said, as is apparent from the case-law cited in paragraph 43 of the present judgment, the Member States have competence to provide, while respecting the principle of proportionality, for penalties in the event of non-compliance with the procedural conditions relating to the exercise of the right to deduct VAT pursuant to Article 273 of the VAT Directive. In particular, EU law does not prevent the Member States from imposing, where appropriate, a fine or financial penalty proportionate to the seriousness of the offence, in order to penalise

non-compliance with formal requirements (judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 48 and the case-law cited).

- 54 By contrast, national legislation that would prohibit systematically the exercise of the right to deduct VAT payable on an intra-Community acquisition during the same period as that during which the same amount of VAT must be calculated, without providing for all of the relevant circumstances to be taken into account, inter alia, the good faith of the taxable person, goes beyond what is necessary, first, to ensure the correct collection of VAT where, as is apparent from the case-law referred to in paragraph 31 of the present judgment, no amount of VAT is payable to the tax authority and, second, to prevent tax evasion.
- 55 Having regard to all of the foregoing considerations, the answer to the question referred is that Articles 167 and 178 of the VAT Directive must be interpreted as precluding national legislation which makes the exercise of the right to deduct VAT payable on an intra-Community acquisitions in the same accounting period as that in which the VAT is due subject to entry of the VAT due in the tax declaration submitted within a three-month period following the end of the month in which the tax liability arose in relation to the goods acquired.

Costs

- 56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

Articles 167 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as precluding national legislation which makes the exercise of the right to deduct value added tax (VAT) payable on an intra-Community acquisition in the same accounting period as that in which the VAT is due subject to entry of the VAT due in the tax declaration submitted within a three-month period following the end of the month in which the tax liability arose in relation to the goods acquired.

[Signatures]