

Parties to the main proceedings

Appellant: SC Terracult SRL

Respondents: Direcția Generală Regională a Finanțelor Publice Timișoara — Administrația Județeană a Finanțelor Publice Arad — Serviciul Inspecție Fiscală Persoane Juridice 5 and Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice Timișoara — Serviciul de Soluționare a Contestațiilor

Question referred

Do the VAT Directive ⁽¹⁾ and the principles of *fiscal neutrality, effectiveness and proportionality* preclude, in circumstances such as those in the main proceedings, an administrative practice and/or an interpretation of provisions of national legislation which prevents the correction of certain invoices and, consequently, the entry of the corrected invoices in the VAT return for the period in which the correction was made, in respect of transactions carried out during a period which was the subject of a tax inspection, following which the tax authorities issued a tax assessment which has become final, when, after the issue of the tax assessment, additional data and information have been discovered which would entail the application of a different tax regime?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 3 January 2019 — SC Mitliv Exim SRL v Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

(Case C-9/19)

(2019/C 131/28)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: SC Mitliv Exim SRL

Defendants: Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

Questions referred

1. Do Articles 2 and 273 of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax, ⁽¹⁾ Article 50 of the Charter of Fundamental Rights of the European Union and Article 325 TFEU, in circumstances such as those in the main proceedings, preclude national legislation, such as that at issue in the main proceedings, which enables the following combination of events to take place:

— the payment of criminal damages, imposed during the pre-trial investigation phase on the basis of something other than a tax claim;

- the subsequent conducting of a tax inspection, in parallel with the criminal proceedings in which the accused taxpayer has been brought to trial to respond to a charge of tax evasion, which imposes on that taxpayer ancillary tax liabilities for both the period and the amount already made available to the State authorities during the pre-trial investigation phase, while the decision regarding the administrative complaint lodged against the administrative and tax measures issued at the time of the inspection has been stayed pending the final decision in the criminal proceedings;
 - the closing of the criminal proceedings at first instance with the accused being sentenced, *inter alia*, jointly to pay the entirety of the amount imposed during the pre-trial investigation phase as being owed by all the accused parties, although only a part of that amount, which has already been paid by the taxpayer concerned, has been ascribed to that taxpayer; and to what extent are all of those events, taken together, excessive with regard to that same taxpayer?
2. In circumstances such as those in the main proceedings, is the State authorities' approach of refusing to take into consideration, from a tax perspective, a payment made before the administrative and criminal penalties have become final, in circumstances where the payment covers part of the tax liability imposed on a taxpayer, even in order to guarantee the objective of collecting tax liabilities owed to the State and to combat fraud, compatible with the principles of EU law in general and with the principle of *non bis in idem* in particular?
 3. In the light of the answers to Questions [1] and [2] above, should EU law be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not regard as a levying of tax contrary to EU law, a situation where a taxpayer pays criminal damages during the pre-trial investigation phase in order to have the term of the penalty reduced by half, where there is no tax claim from the competent authority, or where no final decision has been handed down by a criminal court, but the tax authorities impose, at the time of the tax inspection, ancillary tax liabilities for both the period and the amount already made available to the State authorities, the fee being levied, without grounds, from the time of the payment until such time as the tax liabilities are imposed on the basis of either a tax claim or a final decision in criminal proceedings?

⁽¹⁾ OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 18 January 2019 — AT v Pensionsversicherungsanstalt

(Case C-32/19)

(2019/C 131/29)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: AT

Defendant: Pensionsversicherungsanstalt