Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

13 October 2022*

(Request for a preliminary ruling – Harmonisation of fiscal legislation – Common system of value added tax (VAT) – Directive 2006/112/EC – Sales which are not subject to VAT – VAT unduly invoiced and paid – Liquidation of the provider – Refusal by the tax authority to refund to the customer VAT improperly paid – Principles of effectiveness, tax neutrality and non-discrimination)

In Case C-397/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Budapest High Court, Hungary), made by decision of 25 May 2021, received at the Court on 29 June 2021, in the proceedings

HUMDA Magyar Autó-Motorsport Fejlesztési Ügynökség Zrt.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Seventh Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, F. Biltgen (Rapporteur) and J. Passer, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– HUMDA Magyar Autó-Motorsport Fejlesztési Ügynökség Zrt., by Gy. Hajdu, ügyvéd,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the Czech Government, by O. Serdula, M. Smolek and J. Vláčil, acting as Agents,

– the European Commission, by K. Talabér-Ritz and V. Uher, acting as Agents,

* Language of the case: Hungarian.

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

2 The request has been made in proceedings between HUMDA Magyar Autó-Motorsport Fejlesztési Ügynökség Zrt. ('Humda') and Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary; 'the Appeals Directorate') concerning the rejection by the Appeals Directorate of Humda's application for a refund of the value added tax (VAT) it had been charged in error in respect of a transaction which was not subject to VAT in Hungary and relating to property situated in another Member State.

Legal context

European Union law

3 Article 167 of the VAT Directive provides:

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

4 Article 168(a) of that directive states:

'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:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person'.

5 Article 183 of that directive provides:

'Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.'

Hungarian law

6 Paragraph 2(a) of the általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law No CXXVII of 2007 on value added tax) (*Magyar Közlöny* 2007/155 (XI. 16.)), in the version applicable to the dispute in the main proceedings, provides:

'In accordance with this Law, the following transactions shall be taxable:

(a) the supply of goods and services for consideration within the national territory by a taxable person acting as such.'

7 Paragraph 39 of that law provides:

'(1) Where services are supplied which are directly connected with immovable property, the place of supply shall be the place where the property is located.

(2) Services directly connected with immovable property, as referred to in paragraph 1, shall include, inter alia, the services of estate agents and experts, hotel accommodation services, the assignment of rights of use over immovable property, and services for the preparation and coordination of construction work.'

8 Paragraph 64(3) of the adózás rendjéről szóló 2017. évi CL. törvény (Law No CL of 2017 on General Taxation Procedure), in the version applicable to the dispute in the main proceedings ('Law on General Taxation Procedure'), provides:

'By way of derogation from paragraph 1, provided that the taxable person has not submitted a request for a refund in a tax return which closes the assessment (simplified assessment) or the voluntary assessment (simplified voluntary assessment), the refund of value added tax claimed will take place within a period of 30 days which shall start to run from the date of receipt of the tax return, but under no circumstances from before the due date; that period shall be extended to 45 days where the amount of the tax refund exceeds [1 million forint (HUF) (approximately EUR 2 500)], if the taxable person has paid in full on the filing date of the return the amount, including the tax, of the consideration stated on the invoice corresponding to each of the transactions giving rise to the right to pass on the VAT – exercising his right to deduct the tax in the taxable period in question on the basis of the invoice(s) proving that those transactions were carried out – or if the taxable person's debt has otherwise been discharged in full, and the taxable person indicates on the VAT return that that condition has been met. If, during that period, a tax inspection relating to the taxable person in respect of the budget subsidy sought is commenced or is in progress, the time limit for the grant of a budget subsidy shall start to run from the date on which the decision concerning the findings of the inspection becomes final. For the purposes of the application of this provision, consideration shall be treated as paid if it is retained exclusively pursuant to a performance bond stipulated in advance in the contract.'

9 Paragraph 65(1) of the Law on General Taxation Procedure states:

'If the tax authority pays an amount late, it shall pay, in respect of each day of late payment, interest in an amount equal to the late-payment penalty. Late payment notwithstanding, interest shall not be payable if the claim (declaration) is without legal basis in respect of more than 30% of the amount claimed (declared) or if payment is precluded by an omission on the part of the taxable person or the person required to furnish information.'

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

10 The company in respect of which Humda is the legal successor called upon 'BHA' Bíró Hűtéstechnikai és Acélszerkezetgyártó Ipari Kft. ('BHA') with a view to BHA providing services in connection with the project for the construction of Hungary's pavilion at the World Expo held in 2015 in Milan (Italy) ('the provision of services at issue'). In return for those services, BHA issued nine invoices including VAT, for a total amount of HUF 486 620 000 (approximately EUR 1 230 500). Those invoices were paid by Humda's predecessor and BHA paid to the Hungarian tax authority the VAT invoiced. During a tax inspection, the Hungarian tax authority found that, under Hungarian legislation, the VAT in question was not payable in Hungary, given that the provision of services at issue related to property located in Italy. Consequently, the VAT in question had been invoiced in error.

11 Humda, in order to recover the amount of VAT improperly paid, submitted a claim to the Nemzeti Adó- és Vámhivatal Észak-budapesti Adó- és Vámigazgatóság (North Budapest Tax and Customs Directorate of the National Tax and Customs Administration, Hungary) seeking a refund of the sum of HUF 126 248 760 (approximately EUR 320 000), corresponding to the amount of that VAT, and payment of interest on that amount. According to Humda, even though it is for it to request a refund of that sum from the issuer of the invoice in the context of civil proceedings, which would then have to regularise its situation with the competent tax authority, in the present case, it is faced with the fact that BHA was the subject of judicial liquidation proceedings and that, according to its liquidator, Humda's claim is irrecoverable.

12 Since that request was refused and the subsequent appeal before the Appeals Directorate was dismissed, Humda brought an action before the referring court, the Fővárosi Törvényszék (Budapest High Court, Hungary), seeking, in essence, alteration or annulment of the decision of the Appeals Directorate. According to the information contained in the request for a preliminary ruling, that request is essentially based on the judgments of the Court of Justice of 26 April 2017, *Farkas* (C-564/15, EU:C:2017:302), and of 11 April 2019, *PORR Építési Kft.* (C-691/17, EU:C:2019:327).

13 The Appeals Directorate maintains that those judgments are not relevant, since, in the present case, the provision of services at issue was not carried out in Hungary and did not give rise to a right of deduction on the part of Humda. Moreover, Humda did not seek to exercise its right of deduction. In the judgments relied on by that company, the Court ruled on the payment of VAT not due by the recipient of services to the suppliers on the basis of an invoice drawn up incorrectly under the rules of the ordinary tax system whereas the transaction to which that invoice related fell within the reverse charge system. The Appeals Directorate argues that, in so far as the provision of services at issue does not fall within the scope of the Hungarian law on VAT, the refund requested by Humda cannot be made.

14 The referring court asks, with regard to those judgments, whether the applicable national provisions and national administrative practice are compatible with the VAT Directive and, in particular, with the principles of effectiveness, VAT neutrality and non-discrimination. In that regard, it states that, in the present case, it is impossible or extremely difficult to claim the VAT improperly paid by means of a procedure under civil law, since, first, BHA has in the meantime gone into liquidation, second, BHA's liquidator has stated that it was not possible for it to amend the invoice already drawn up by BHA, third, BHA has not claimed a refund of the tax improperly

paid, fourth, Humda has, however, brought civil proceedings against the Hungarian tax authority, fifth, there is no dispute that the VAT was paid to the Treasury and, sixth, there is no suspicion of fraud.

15 The referring court also asks whether, if Humda were entitled to submit a request for a refund directly to the Hungarian tax authority, the Hungarian tax authority is required to pay late-payment interest on the sum relating to that refund and, if so, what time limits are to be taken into consideration for that purpose.

16 In those circumstances, the Fővárosi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the provisions of the VAT Directive, in the light of the general principles thereof, in particular the principles of effectiveness and fiscal neutrality, be interpreted as precluding national legislation, and national practice based thereon, pursuant to which, where a taxable person liable for VAT erroneously issues an invoice including VAT in respect of an exempt supply and pays that tax to the Treasury in a provable manner, and the addressee of the invoice pays that VAT to the issuer of the invoice who charged the VAT, the national tax authority does not refund that VAT to either the issuer or the addressee of the invoice?

(2) If the Court of Justice of the European Union answers the first question in the affirmative, must the provisions of the VAT Directive, in the light of the general principles thereof, in particular the principles of effectiveness, fiscal neutrality and non-discrimination, be interpreted as precluding national legislation pursuant to which, in the situation described in the previous question, the addressee of the invoice is absolutely prohibited from contacting the national tax authority directly in order to request a refund of the VAT or is permitted to do so only if it is impossible or excessively difficult to claim the amount of VAT in question by using another procedure under civil law, particularly where the issuer of the invoice has gone into liquidation in the meantime?

(3) If the above question is answered in the affirmative, is the national tax authority under an obligation in those circumstances to pay interest on the VAT to be refunded? If that obligation does exist, what period of time does it cover? Is that obligation subject to the general rules on refunds of VAT?'

Consideration of the questions referred

The first and second questions

17 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether the VAT Directive, read in the light of the principles of effectiveness and VAT neutrality must be interpreted as precluding legislation of a Member State under which a taxable person to whom another taxable person has provided a service cannot claim, directly from the tax authority, a refund of the amount corresponding to the VAT in respect of which that service provider has unduly invoiced that taxable person and which that service provider has paid to the Treasury, where it is impossible or excessively difficult to claim that amount from that supplier because that supplier has gone into liquidation.

18 As a preliminary point, it must be recalled that the principle of VAT neutrality, which lies at the heart of the common system of VAT established by EU legislation, is ensured by the right of deduction which is intended to relieve the operator entirely of the burden of the VAT due or paid in respect of all his or her economic activities and therefore ensuring neutrality of taxation of all economic activities, whatever their purpose or results of those activities, provided that they are themselves, in principle, subject to VAT (see, to that effect, judgment of 1 July 2021, *Tribunal Económico Administrativo Regional de Galicia*, C-521/19, EU:C:2021:527, paragraph 28 and the case-law cited). It is true that it is not expressly stated in the request for a preliminary ruling that Humda benefited from a right of deduction in respect of VAT invoiced and paid in error. However, since, in its first and second questions, the referring court refers to the principle of VAT neutrality, it must be held, subject to verification by that court, that Humda or its predecessor had a right to deduct that VAT.

19 Having set out that premiss, it should be noted that, according to settled case-law, in the absence of any provision in the VAT Directive on the adjustment by the issuer of the invoice of VAT improperly charged, it is, in principle, for the Member States to lay down the conditions in which that VAT may be adjusted (see, to that effect, judgments of 15 March 2007, *Reemtsma Cigarettenfabriken*, C-35/05, EU:C:2007:167, paragraph 38, and of 2 July 2020, *Terracult*, C-835/18, EU:C:2020:520, paragraph 26 and the case-law cited).

20 In order to ensure neutrality of VAT, it is for the Member States to provide, in their domestic legal systems, for the possibility of adjusting any tax improperly invoiced where the person who issued the invoice shows that he or she acted in good faith (judgment of 2 July 2020, *Terracult*, C-835/18, EU:C:2020:520, paragraph 27 and the case-law cited).

21 It is also apparent from the case-law of the Court that national legislation under which, first, the supplier who has paid the VAT to the tax authorities in error may seek to be reimbursed and, second, the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due observes the principles of VAT neutrality and effectiveness. Such a system enables the recipient who bore the VAT invoiced in error to obtain a reimbursement of the sums unduly paid (see, to that effect, judgment of 15 March 2007, *Reemtsma Cigarettenfabriken*, C-35/05, EU:C:2007:167, paragraph 39).

22 If the refund of the VAT becomes impossible or excessively difficult, in particular in the case of the insolvency of the supplier, the principles of VAT neutrality and effectiveness require the Member States to provide for the instruments necessary to enable the recipient to recover the VAT which has been unduly invoiced and paid, in particular by addressing its application for reimbursement to the tax authorities directly (see, to that effect, judgments of 15 March 2007, *Reemtsma Cigarettenfabriken*, C-35/05, EU:C:2007:167, paragraph 41, and of 11 April 2019, *PORR Építési Kft.*, C-691/17, EU:C:2019:327, paragraph 48).

23 The Court inferred from that that the Member States must provide for the instruments and the detailed procedural rules necessary to enable the recipient of the services to recover the unduly invoiced tax in order to respect the principle of effectiveness (judgment of 15 March 2007, *Reemtsma Cigarettenfabriken*, C-35/05, EU:C:2007:167, paragraph 41).

24 Subject to the preliminary considerations set out in paragraph 18 above, that case-law can be applied to a situation such as that at issue in the main proceedings. It is apparent from the request for a preliminary ruling, first, that the provision of services at issue related to immovable property situated in a Member State other than that in which VAT was paid in error. In the case

which gave rise to the judgment of 15 March 2007, *Reemtsma Cigarettenfabriken* (C-35/05, EU:C:2007:167), the provision of services was also not subject to VAT in the Member State concerned, since the services had been supplied in another Member State. Second, it is apparent from that request that there was, in the present case, neither abuse nor fraud, since both the supplier and the recipient of the services acted in good faith. It follows that, in both the case in the main proceedings and in the case which gave rise to that judgment, there is no risk of loss of tax revenue and it is impossible or extremely difficult for the recipient to obtain from the service provider the refund of the VAT improperly paid since the latter has, in the meantime, gone into liquidation.

25 Contrary to the Hungarian Government's arguments in its written observations, the applicability to the present case of the case-law arising from the judgment of 15 March 2007, *Reemtsma Cigarettenfabriken* (C-35/05, EU:C:2007:167), cannot be called into question on the ground that the dispute in the main proceedings does not concern the recipient's right of deduction. In that judgment, the Court did not take account of such a distinction, but expressed itself in general terms. In addition, as in the present case, the circumstances of the case which gave rise to that judgment concerned a supply which was not subject to VAT in the Member State in which that tax had been invoiced and in the budget of which it had been paid.

26 However, it should be added that Member States have the right to attach penalties to the formal obligations of taxable persons to encourage them to comply with those obligations, in order to ensure the proper working of the VAT system and that, accordingly, an administrative fine can be imposed on a taxable person whose application for a refund of the VAT paid but not due is the result of its own negligence (judgment of 2 July 2020, *Terracult*, C-835/18, EU:C:2020:520, paragraph 36 and the case-law cited).

27 In that regard, the Court has stated that, assuming that the taxable person's negligence is established, which is a matter for the national courts to determine, the Member State concerned must employ means which, whilst enabling it effectively to attain the objective pursued by national legislation, are the least detrimental to the principles laid down by EU legislation, such as the principle of neutrality of VAT. Therefore, in view of the position which that principle has in the common system of VAT, a penalty consisting of an absolute denial of the right to a refund of VAT incorrectly invoiced and paid but not due, appears disproportionate (judgment of 2 July 2020, *Terracult*, C-835/18, EU:C:2020:520, paragraph 37 and the case-law cited).

28 It must also be borne in mind that the prevention of tax evasion, avoidance and abuse is an objective recognised and encouraged by the VAT Directive. Similarly, the Court has repeatedly held that EU law cannot be relied on for abusive or fraudulent ends. It is, therefore, for the national courts and judicial authorities to refuse the right to a refund of VAT unduly invoiced and paid but not due, if it is shown, in the light of objective factors, that that right is being relied on for fraudulent or abusive ends (see, to that effect, judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 50 and the case-law cited).

29 However, it is apparent from the documents before the Court that the legislation at issue in the main proceedings, as applied by the Hungarian tax authority, amounts in fact to refusing, in the circumstances described in the first question and in the absence of a risk of fraud or abuse on the part of the taxable persons concerned, to refund the recipient in respect of VAT which has been unduly invoiced and paid. It follows that, subject to the verification to be carried out by the referring court, that legislation is disproportionate.

30 Having regard to the foregoing considerations, the answer to the first and second questions is that the VAT Directive, read in the light of the principles of effectiveness and VAT neutrality, must be interpreted as precluding legislation of a Member State under which a taxable person to whom another taxable person has provided a service cannot claim, directly from the tax authority, a refund of the amount corresponding to the VAT in respect of which that service provider has unduly invoiced that taxable person and which that service provider has paid to the Treasury, where it is impossible or excessively difficult to recover that amount from that service provider on account of that service provider having gone into liquidation and even though no fraud or abuse can be attributed to those two taxable persons, with the result that there is no risk of loss of tax revenue for that Member State.

The third question

31 By its third question, the referring court asks, in essence, whether the VAT Directive must be interpreted as meaning that, where a taxable person to whom another taxable person has provided a service can claim directly from the tax authority a refund of the amount corresponding to the VAT in respect of which that service provider has unduly invoiced that taxable person and which that service provider has paid to the Treasury, that authority is obliged to pay interest on that amount and, if so, what period of time it covers and in accordance with which conditions.

32 As regards the obligation to pay interest, it must be recalled that the Court has repeatedly held that where a Member State has levied taxes in breach of the rules of EU law, individuals are entitled to reimbursement not only of the tax unduly levied but also of the amounts paid to that State or retained by it which relate directly to that tax. That also includes losses constituted by the unavailability of sums of money as a result of a tax being levied prematurely. Accordingly, the principle of the obligation of Member States to repay with interest amounts of tax levied in breach of EU law follows from that law (see, to that effect, judgment of 19 July 2012, *Littlewoods Retail Ltd and Others*, C-591/10, EU:C:2012:478, paragraphs 25 and 26 and the case-law cited).

33 The Court added that, in the absence of EU legislation, it is for the internal legal order of each Member State to lay down the conditions in which such interest must be paid, particularly the rate of that interest and its method of calculation (simple or 'compound' interest). Those conditions must comply with the principles of equivalence and effectiveness; that is to say that they must not be less favourable than those concerning similar claims based on provisions of national law or arranged in such a way as to make the exercise of rights conferred by the EU legal order practically impossible (judgment of 19 July 2012, *Littlewoods Retail Ltd and Others*, C-591/10, EU:C:2012:478, paragraph 27 and the case-law cited).

34 However, it must be stated that, in the case in the main proceedings, the Hungarian tax authority did not require payment of the VAT in question in breach of EU legislation, but pursuant to Article 203 of the VAT Directive, which provides that 'VAT shall be payable by any person who enters the VAT on an invoice', with the result that VAT invoiced in error is due. It is clear from the case-law of the Court that the VAT indicated on an invoice is payable by the issuer of the invoice even in the absence of an actual taxable transaction (see, to that effect, judgment of 8 May 2019, *EN.SA.*, C-712/17, EU:C:2019:374, paragraph 26).

35 Accordingly, it cannot be held that, in the present case, VAT was levied 'in breach of EU law', within the meaning of the judgment of 19 July 2012, *Littlewoods Retail Ltd and Others* (C-591/10, EU:C:2012:478), with the result that no guidance can be drawn from that judgment in so far as concerns any interest payable by the tax authority in a situation such as that in the main proceedings.

36 That said, since, as is apparent from the answer to the first two questions, the Member States are under an obligation to provide for an adjustment or refund of VAT invoiced and paid in error to a taxable person who has a right to deduct VAT paid in that manner where, in particular, there is no risk of a loss of tax revenue for the Member State concerned, and since such a refund of a VAT claim can, in view of its nature, be compared to an excess of VAT as provided for in Article 183 of the VAT Directive, it is appropriate, in a situation such as that at issue in the main proceedings, to refer to the latter provision.

37 In that regard, the Court has held that, even though Article 183 of the VAT Directive does not lay down an obligation to pay interest on the excess VAT to be refunded or specify the date from which such interest is payable, the principle of fiscal neutrality of the VAT system requires that the financial loss incurred on account of a refund of excess VAT not made within a reasonable period of time be compensated through the payment of default interest (judgment of 12 May 2021, *technoRent International and Others*, C-844/19, EU:C:2021:378, paragraph 40).

38 In a situation such as that at issue in the main proceedings, which is characterised by the fact that a refund of VAT by the service provider which has invoiced it in error is impossible or excessively difficult on account of the fact that that service provider has gone into liquidation, the taxable person to whom the services are provided and who has paid VAT not due will, pending reimbursement of that VAT, suffer financial damage as a result of the unavailability of the sum corresponding to the amount of that tax. In such circumstances, where the tax authority does not refund that VAT improperly paid within a reasonable period of time after having had a claim to that effect brought before it by that taxable person based on the fact that recovery of the sum paid but not due to the service provider is impossible or excessively difficult, a breach of the principle of fiscal neutrality arises.

39 As regards the rules for applying interest for the refund of VAT unduly invoiced and paid, it is apparent from paragraph 33 of the present judgment that, in the absence of any provision in the VAT Directive in that regard, those rules fall within the procedural autonomy of the Member States, circumscribed by the principles of equivalence and effectiveness.

40 As regards the principle of effectiveness, which is the only relevant principle in the present case, that principle requires that the national rules relating in particular to the calculation of any interest due do not result in the taxable person being deprived of adequate compensation in respect of the loss caused by a refund of VAT which does not occur within a reasonable period of time. It is for the referring court to establish, having regard to all the circumstances of the case in the main proceedings, whether that is so in the present case.

41 In that regard, it must be borne in mind that, in accordance with the Court's settled case-law, both the administrative authorities and the national courts that are called upon, within the exercise of their respective powers, to apply provisions of EU law are under a duty to give full effect to those provisions (judgment of 12 May 2021, *technoRent International and Others*, C-844/19, EU:C:2021:378, paragraph 52 and the case-law cited), where necessary by interpreting national law in conformity with EU law.

42 The obligation to interpret national law in conformity with EU law requires the national court to consider the whole body of national law in order to assess to what extent it may be applied so as not to produce a result contrary to EU law (see, to that effect, judgment of 12 May 2021, *technoRent International and Others*, C-844/19, EU:C:2021:378, paragraph 53 and the case-law cited).

43 That being said, the principle that national law must be interpreted in conformity with EU law has certain limits. The obligation on a national court to refer to the content of EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law, including legal certainty, and cannot serve as the basis for an interpretation of national law *contra legem* (judgment of 12 May 2021, *technoRent International and Others*, C-844/19, EU:C:2021:378, paragraph 54 and the case-law cited).

44 In the present case, it will be for the referring court to examine whether it is possible to give full effect to EU law by taking into consideration the whole body of national law and, where necessary, by applying the provisions of national law *mutatis mutandis*.

45 Having regard to the foregoing considerations, the answer to the third question is that Article 183 of the VAT Directive, read in the light of the principle of VAT neutrality, must be interpreted as meaning that, where a taxable person to whom another taxable person has provided a service can claim directly from the tax authority a refund of the amount corresponding to the VAT in respect of which that service provider has unduly invoiced that taxable person and which that service provider has paid to the Treasury, that authority is obliged to pay interest on that amount where it has not made that refund within a reasonable period of time after having been requested to do so. The rules for applying interest on that amount fall within the procedural autonomy of the Member States, circumscribed by the principles of equivalence and effectiveness, it being understood that the national rules relating in particular to the calculation of any interest due must not result in the taxable person being deprived of adequate compensation in respect of the loss caused by the late refund of that amount. It is for the referring court to do whatever lies within its jurisdiction to give full effect to that Article 183 by interpreting national law in conformity with EU law.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action 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 (Seventh Chamber) hereby rules:

1. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of the principles of effectiveness and neutrality of value added tax (VAT),

must be interpreted as precluding legislation of a Member State under which a taxable person to whom another taxable person has provided a service cannot claim, directly from the tax authority, a refund of the amount corresponding to the VAT in respect of which that service provider has unduly invoiced that taxable person and which that service provider has paid to the Treasury, where it is impossible or excessively difficult

to claim that amount from that service provider on account of that service provider having gone into liquidation and even though no fraud or abuse can be attributed to those two taxable persons, with the result that there is no risk of loss of tax revenue for that Member State.

2. Article 183 of Directive 2006/112, read in the light of the principle of neutrality of VAT,

must be interpreted as meaning that, where a taxable person to whom another taxable person has provided a service can claim directly from the tax authority a refund of the amount corresponding to the VAT in respect of which that service provider has unduly invoiced that taxable person and which that service provider has paid to the Treasury, that authority is obliged to pay interest on that amount where it has not made that refund within a reasonable period of time after having been requested to do so. The rules for applying interest on that amount fall within the procedural autonomy of the Member States, circumscribed by the principles of equivalence and effectiveness, it being understood that the national rules relating in particular to the calculation of any interest due must not result in the taxable person being deprived of adequate compensation in respect of the loss caused by the late refund of that amount. It is for the referring court to do whatever lies within its jurisdiction to give full effect to that Article 183 by interpreting national law in conformity with EU law.

[Signatures]