

**Parties to the main proceedings**

*Applicant:* CCC — Consorzio Cooperative Costruzioni Soc. Cooperativa

*Defendant:* Comune di Tarvisio

**Question referred**

Is a provision such as that of Article 53(3) of Legislative Decree No 163 of 16 April 2006 that allows the participation of an undertaking with a 'named' design engineer who, since he is not himself a tenderer, may not rely on the capacity of others, compatible with Article 48 of Directive 2004/18/EC of 31 March 2004? <sup>(1)</sup>

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<sup>(1)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

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**Request for a preliminary ruling from the Commissione Tributaria Regionale per la Lombardia (Italy)  
lodged on 20 December 2017 — EN.SA. Srl v Agenzia delle Entrate — Direzione Regionale  
Lombardia Ufficio Contenzioso**

(Case C-712/17)

(2018/C 112/23)

*Language of the case: Italian*

**Referring court**

Commissione Tributaria Regionale per la Lombardia

**Parties to the main proceedings**

*Appellant:* EN.SA. Srl

*Respondent:* Agenzia delle Entrate — Direzione Regionale Lombardia Ufficio Contenzioso

**Question referred**

In the event of transactions found to be non-existent, which did not cause harm to the Treasury and did not confer any tax benefit on the taxpayer, are national rules resulting from the application of Article 19 (Deduction) and 21(7) (Invoicing of transactions) of Decreto de Presidente della Repubblica 633/72 of 16 October 1972 and Article 6(6) of Decreto Legislativo 471 of 18 December 1997 (Breach of obligations relating to documentation, registration and detection of transactions) consistent with the Community principles on VAT laid down by the Court of Justice, when their simultaneous application bring about:

- (a) the repeated non-deductibility of tax paid on purchases by the transferee for every transaction at issue which relates to the same person and the same taxable amount;
  - (b) the application of the tax on, and payment of the tax by, the transferor (and the preclusion of recovery of sums unduly paid) for the corresponding and mirror sale transactions deemed equally non-existent;
  - (c) the application of a penalty equal to the amount of tax on acquisitions deemed non-deductible?
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