

Judgment of the Court (First Chamber) of 3 July 2019 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — ‘UniCredit Leasing’ EAD v Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ — Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (NAP)

(Case C-242/18) ⁽¹⁾

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Taxable amount — Reduction — Principle of fiscal neutrality — Financial leasing agreement terminated for non-payment of lease instalments — Tax assessment notice — Scope — Taxable transactions — Supply of goods for consideration — Payment of ‘compensation’ for termination up to the end of the agreement — Jurisdiction of the Court of Justice)

(2019/C 305/22)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant: ‘UniCredit Leasing’ EAD

Respondent: Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ — Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (NAP)

Operative part of the judgment

1. Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as allowing, in the event of termination of a financial leasing agreement, a reduction in the taxable amount for value added tax established as a lump sum by way of a tax assessment notice on the basis of all the monthly leasing instalments due for the entire duration of the contract, even though that tax assessment notice has become effective and therefore constitutes a ‘settled administrative act’ establishing that there is outstanding tax liability under national law.
2. Article 90 of Directive 2006/112 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the failure to pay part of the leasing instalments due under a financial leasing agreement in respect of the period from the cessation of payments to the time of the non-retroactive termination of the agreement, on the one hand, and the failure to pay compensation due in the event of early termination of the agreement and corresponding to the amount of all the unpaid instalments up to the end of the term of the agreement, on the other hand, constitute a case of non-payment capable of being covered by the derogation from the requirement to reduce the taxable amount for value added tax, laid down in paragraph 2 of that article, unless the taxable person demonstrates a reasonable probability that the debt will not be honoured, this being a matter to be determined by the referring court.

⁽¹⁾ OJ C 211, 18.6.2018.