Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Must the provisions of Articles 49, 54, 107 and 108 TFEU be interpreted as precluding a national measure pursuant to which a Member State's legislation (Law establishing liability to a special tax on telecommunications) has the effect that the actual tax burden falls on foreign-owned taxable persons? Is that effect indirectly discriminatory?

2. Do Articles 107 and 108 TFEU preclude a Member State's legislation imposing a tax liability on turnover calculated on the basis of a progressive tax rate? If the effect of that legislation is that the actual tax burden, for the highest tax band, falls mainly on foreign-owned taxable persons, is that legislation indirectly discriminatory? Does that effect amount to prohibited State aid?

3. Must Article 401 of the VAT Directive ([1]) be interpreted as precluding legislation of a Member State that gives rise to a distinction between foreign-owned taxable persons and national taxable persons? Must the special tax be considered a tax on turnover? In other words, is this tax compatible or not with the VAT Directive?

([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 Szekszárdi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 16 February 2018 — Dalmandi Mezőgazdasági Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-126/18)

(2018/C 221/04)

Language of the case: Hungarian

Referring court

Szekszárdi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Dalmandi Mezőgazdasági Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Is a judicial practice of a Member State pursuant to which, when the relevant default-interest provisions are examined, it is proceeded on the basis that the national tax authority has not committed an infringement (failure to act) — that is, it has not delayed payment as regards the non-recoverable part of the value added tax ('VAT') … on the taxable persons' unpaid purchases — because when that tax authority adopted its decision, the national legislation infringing Community law was in force and it was not until later that the Court of Justice declared that the requirement laid down in that legislation did not comply with Community law, consistent with the provisions of Community law, with the provisions of Council Directive 2006/112/EC ([1]) ('the VAT Directive') (having regard in particular to Article 183 thereof), and with the principles of effectiveness, direct effect and equivalence? Accordingly, the national practice accepted that the application of that requirement laid down in the national legislation infringing EU law was quasi-compliant with the law until the point at which the national legislature formally repealed the requirement.

2. Are the legislation and practice of a Member State which, when the relevant default-interest provisions are examined, distinguish between whether the tax authority failed to refund the tax in compliance with the national provisions then in force — which, moreover, infringed Community law — or whether it failed to do so in breach of such provisions and which, as regards the amount of the interest accrued on the VAT whose refund could not be claimed within a reasonable period due to a national-law requirement declared contrary to EU law by the Court of Justice, set out two definable periods, with the result that,

   — in the first period, taxable persons only have the right to receive default interest at the central bank base rate, in view of the fact that since the Hungarian legislation contrary to Community law was still then in force, the Hungarian tax authorities did not act unlawfully by not authorising the payment within a reasonable period of the VAT included in the invoices, whereas

   — in the second period interest double the central bank base rate — applicable moreover in the event of delay in the legal system of the Member State in question — must be paid only for the late payment of the default interest corresponding to the first period consistent with Community law, in particular with the provisions of the VAT Directive (having regard in particular to Article 183 thereof), and with the principles of equivalence, effectiveness and proportionality?

3. Is a practice of a Member State which sets as the initial date for the calculation of default interest (compound interest, or interest on interest) accrued in accordance with a Member State's provisions on the delay in payment of the default interest on the tax retained contrary to EU law (interest on the VAT; in this case, the principal) not the original date of accrual of the interest on the VAT (principal), but a later point in time, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness, taking into account in particular the fact that a claim for interest on taxes retained, or not refunded, contrary to EU law is a substantive right which flows directly from EU law itself?

4. Is a practice of a Member State pursuant to which the taxable person must submit a separate claim if it claims interest accrued because of a tax authority's default, while in other cases where default interest is claimed such a separate claim is not required because interest is granted automatically, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness?

5. If the previous question is answered in the affirmative, is a practice of a Member State pursuant to which compound interest (interest on interest) for the delay in the payment of interest on the tax retained contrary to EU law as declared by the Court of Justice (interest on the VAT; in this case, the principal) may only be granted if the taxable person submits a special claim whereby interest is not specifically claimed, but rather the amount of the tax indebted on the unpaid purchases precisely at the time when the Member State's rule contrary to EU law which required the VAT due on account of that failure to pay to be retained was repealed under national law, although the interest on the VAT which serves as the basis for claiming the compound interest as regards the tax return periods prior to the special claim has already accrued and has still not been paid, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness?

6. If the previous question is answered in the affirmative, is a practice of a Member State which entails the loss of the right to receive compound interest (interest on interest) for the delay in the payment of interest on the tax retained contrary to EU law as declared by the Court of Justice (interest on the VAT; in this case, the principal) in relation to claims for interest on VAT which was not the subject of the VAT return period affected by the limitation period laid down for the submission of the special claim, since such interest had accrued beforehand, consistent with Community law, with Article 183 of the VAT Directive and with the principle of effectiveness?

7. Is a practice of a Member State which definitively deprives the taxable person of the possibility of claiming interest on the tax retained in accordance with national legislation subsequently declared contrary to Community law and which prohibited claiming the VAT in respect of certain unpaid purchases, with the result that

— [pursuant to that practice] the claim for interest was not considered well-founded at the point in time when [the refund of] the tax was demandable, on the basis that the provision subsequently declared contrary to Community law was in force (on the ground that there had been no delay and that the tax authority had simply applied the law in force),

— and subsequently, when the provision declared contrary to Community law and which limited the right to refund had been repealed in the national legal system, on the basis of being time-barred, consistent with Community law and with Article 183 of the VAT Directive (taking into account in particular the principle of effectiveness and the character of a substantive right of the claim for interest for the taxes wrongfully not returned)?

8. Is a practice of a Member State pursuant to which the possibility of claiming the default interest which must be paid on the interest on the VAT (principal) to which the taxable person is entitled in respect of the tax not refunded when it was originally demandable, due to a national-law rule subsequently declared contrary to Community law, is made dependent, for the entirety of the period between 2005 and 2011, upon whether the taxable person is currently in a position to request the refund of the VAT for the tax return period during which the provision contrary to Community law in question was repealed in the national legal system (September 2011), although the payment of the interest on the VAT (principal) had not occurred before that point in time nor has occurred subsequently, before the claim is brought before the national court, consistent with Community law and with Article 183 of the VAT Directive and with the principle of effectiveness?

([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 Szombathelyi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 6 March 2018 — FS v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-173/18)

(2018/C 221/05)

Language of the case: Hungarian

Referring court

Szombathelyi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: FS

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Question referred

Must EU law be interpreted to the effect that the tax authority may not, when carrying out an ex post inspection, exclude the possibility for a taxable person to opt for the VAT exemption for small businesses?

Request for a preliminary ruling from the Sąd Rejonowy Gdańsk-Południe w Gdańsku (Poland) lodged on 9 March 2018 — Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) v Bank BGŻ BNP Paribas S.A. in Gdańsk

(Case C-183/18)

(2018/C 221/06)

Language of the case: Polish

Referring court

Sąd Rejonowy Gdańsk-Południe w Gdańsku