Reports of Cases

ORDER OF THE COURT (Seventh Chamber)

3 June 2022 *

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Right to deduct VAT – Procedure for exercising that right – Revocation and subsequent restoration of a taxable person's tax identification number – Forfeiture of the right to deduct VAT in respect of transactions carried out during the period prior to that revocation – Principle of proportionality)

In Case C-188/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 25 February 2021, received at the Court of Justice on 25 March 2021, in the proceedings

Megatherm-Csillaghegy Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Seventh Chamber),

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

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

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

– the European Commission, by B. Béres and J. Jokubauskaitė, acting as Agents,

having regard to the decision, after hearing the Advocate General, to rule by reasoned order pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

* Language of the case: Hungarian.

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Articles 63, 167 and 168, 178 to 180, 182 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('the VAT Directive'), and of the principle of neutrality of value added tax (VAT).

2 The reference has been made in proceedings between Megatherm-Csillaghegy Kft. and the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary) concerning the latter's decision to deprive Megatherm-Csillaghegy of its right to deduct VAT paid before the revocation and subsequent restoration of its tax identification number.

Legal context

European Union law

3 According to recital 30 of the VAT Directive, 'in order to preserve neutrality of VAT, the rates applied by Member States should be such as to enable, as a general rule, deduction of the VAT applied at the preceding stage'.

4 Article 63 of that directive states:

'The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.'

5 According to Article 167 of the directive:

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

6 Article 168 of the same directive reads as follows:

'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;

(b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;

…'

7 Article 178 of the VAT Directive states:

‘In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI;

(b) for the purposes of deductions pursuant to Article 168(b), in respect of transactions treated as the supply of goods or services, he must comply with the formalities as laid down by each Member State;

…’

8 Article 179 of that directive stipulates:

‘The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

However, Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12, exercise their right of deduction only at the time of supply.’

9 Article 180 of the directive reads as follows:

‘Member States may authorise a taxable person to make a deduction which he has not made in accordance with Articles 178 and 179.’

10 Article 182 of the same directive states:

‘Member States shall determine the conditions and detailed rules for applying Articles 180 and 181’.

11 Article 250(1) of the VAT Directive provides:

‘Every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions.’

12 Article 273 of that directive stipulates:

‘Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.’

Hungarian law

13 Article 137(3) of the az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Act CXXVII of 2007 on value added tax) (*Magyar Közlöny* 2007/155 (XI. 16.)) ('the VAT Act'), in the version in force in the period from 1 January 2015 to 31 December 2017, stipulated:

'In the case where the national tax and customs authority, in accordance with the [Law on General Taxation Procedure], terminates the suspension of a taxable person's tax identification number by revoking it, the taxable person shall forfeit his or her right to deduct tax on the date on which the decision revoking that number becomes final. The taxable person shall forfeit his or her right to deduct tax on the date on which the decision revoking that number becomes final also in the case where the authority revokes that number without having suspended it.'

14 Article 137 of the VAT Act, in the version applicable during the period from 1 January 2018 to 26 November 2020, stated:

'When the national tax and customs authority revokes the tax identification number of a taxable person, the latter shall forfeit his or her right to deduct tax on the date on which the decision revoking that number becomes final.'

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

15 Following the decision of 8 April 2015, the Nemzeti Adó- és Vámhivatal Pest Megyei Adó- és Vámigazgatósága (Pest County Tax and Customs Directorate of the National Tax and Customs Administration, Hungary) ('the Tax and Customs Directorate') revoked the tax identification number of the applicant in the main proceedings on the ground that it had failed to comply with its obligations to file and publish its annual accounts electronically for the year 2013, despite having been sent several reminders and having been fined for that failure to do so. Following the action taken by the applicant in the main proceedings to remedy that failure on 10 June 2015, the Tax and Customs Directorate restored its tax identification number with effect from that date.

16 On 20 January 2015, the applicant in the main proceedings filed its tax return for October 2014. However, that return was archived by the Tax and Customs Directorate on the ground that it had been filed as a quarterly return and not as a monthly return, without the figures contained in it being recorded. On 8 August 2016, the applicant in the main proceedings filed a new tax return in respect of the relevant period. That new tax return was followed by several amendments, the last of which was dated 6 December 2016. The Tax and Customs Directorate considered that that new tax return was erroneous on the ground that it mentioned a deductible tax even though, due to the revocation of the tax identification number of the applicant in the main proceedings, it could not include such a tax. The Tax and Customs Directorate therefore requested the applicant in the main proceedings to correct it. As no such correction was made, the Tax and Customs Directorate informed the applicant in the main proceedings that it was archiving that new tax return without examining its substance.

17 According to the application lodged with the Tax and Customs Directorate on 22 December 2016, the applicant in the main proceedings requested in particular that an amount corresponding to the amount of input VAT paid in the period prior to the restoration of its tax identification

number, specifically 75 889 000 forint (HUF) (approximately EUR 242 844.80), should be credited to it or refunded. Part of that amount corresponded to input VAT paid in the period prior to revocation of that number.

18 The Tax and Customs Directorate informed the applicant in the main proceedings that there were no grounds for granting its request and that its right to deduct VAT had lapsed in respect of the period prior to the revocation of its tax identification number. The applicant in the main proceedings asked the supervisory authority to rule on the matter. Given that that request was unsuccessful, it then lodged a judicial appeal seeking an order directing the authority of first instance, namely the Tax and Customs Directorate, to rule on its request of 22 December 2016. Following the order issued by the Fővárosi Törvényszék (Budapest High Court, Hungary) directing it to take up the case, the Tax and Customs Directorate ruled on that request by issuing a total of five decisions, with one for each reporting period.

19 In particular, based on the decision of 3 April 2019, the Tax and Customs Directorate rejected the request of the applicant in the main proceedings for the amount of deductible VAT mentioned in the corrected return filed for the period from 1 to 31 October 2014 to be entered in its tax account and refunded to it. That decision was the subject of an administrative appeal and confirmed by the decision of the Appeals Directorate of the National Tax and Customs Administration on 3 June 2019.

20 It is apparent from the latter decision that it was only as a result of the restoration of its tax identification number, which took place after its revocation, that the applicant in the main proceedings had submitted a VAT return for the month of October 2014 in a state fit for processing and that, in accordance with Article 137(3) of the VAT Act, in the version applicable during the period from 1 January 2015 to 31 December 2017, it had lost its right to deduct VAT in respect of the period prior to the revocation of its tax identification number.

21 The applicant in the main proceedings lodged an appeal against the decision of the Appeals Directorate of the National Tax and Customs Administration of 3 June 2019, which was rejected at first instance by a judgment which has become final.

22 The applicant in the main proceedings therefore lodged an appeal in cassation against that judgment with the referring court, the Kúria (Supreme Court, Hungary). As part of that appeal, it argues in particular that that judgment is contrary to Articles 167 and 168, 176 and 177 of the VAT Directive and infringes the principle of neutrality of VAT, in that it states that the right to deduct VAT had lapsed in respect of the period prior to the revocation of its tax identification number. The applicant in the main proceedings also submits that Articles 176 and 177 of the VAT Directive do not give Member States the power to link the forfeiture of the right to deduct VAT paid to the revocation of a taxable person's tax identification number.

23 The referring court notes that the applicant in the main proceedings carried on a genuine commercial activity during October 2014 and that it intended to comply with its declaration obligation in respect of that period, although it did not do so within the required period and filed its return only after its tax identification number was restored following its revocation. Furthermore, according to the findings of that court, there is nothing in the file before it to suggest that the applicant in the main proceedings sought to exercise its right to deduct VAT in a fraudulent manner.

24 The referring court infers from the case-law of the Court that failure to comply with the formalities governing the right to deduct VAT may result in the refusal of that right only if it prevents the relevant tax authorities from determining the amount of tax or hinders effective action to combat VAT fraud. Therefore, the Court considers that the revocation of a taxable person's tax identification number does not in itself justify depriving the latter of his or her right to deduct the VAT paid, as depriving a taxable person of the right to deduct VAT can only occur if facts amounting to proof of VAT fraud are established.

25 In those circumstances, the Kúria (Supreme Court, Hungary) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the principle of VAT neutrality as well as recital 30 and Articles 63, 167 and 168, 178 to 180, 182 and 273 of the VAT Directive to be interpreted as precluding the last sentence of Article 137(3) of the [VAT Act] in the version in force during the period from 1 January 2015 to 31 December 2017 …, as well as Article 137 of that Act, in the version in force during the period from 1 January 2018 to 26 November 2020 …?

(2) Is Article 273 of the VAT Directive to be interpreted as meaning that forfeiture of the right to deduct tax, as a mandatory legal consequence, goes (disproportionately) beyond what is necessary to achieve the objectives of collecting tax and combating tax evasion?'

Consideration of the questions referred for a preliminary ruling

26 Under Article 99 of its Rules of Procedure, in particular, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to such a question admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

27 It is appropriate to apply that provision in the present case.

Admissibility

28 Without strictly arguing that the reference for a preliminary ruling is inadmissible, the Hungarian Government claims, in essence, that the questions referred are based on an erroneous interpretation of Hungarian law and, in particular, of the consequences of revoking the tax identification number followed by its restoration in relation to a taxable person's right to deduct VAT in a situation such as that at issue in the main proceedings.

29 In particular, the Hungarian Government explains that Article 137(3) of the VAT Act, of which the referring court questions the compatibility with the VAT Directive, was the subject of an amendment that entered into force on 27 November 2020, pursuant to which a taxable person does not forfeit his or her right to deduct VAT when his or her tax identification number is revoked where the Tax and Customs Directorate has restored that number after revoking it, thereby allowing the taxable person to exercise his or her right of tax deduction 'through self-correction' within a limitation period. That option would also apply, under the transitional provisions, in respect of taxable persons whose tax identification number has been restored before the entry into force of that amendment. Moreover, it would be possible to obtain, in situations such as that at issue in the main proceedings, a refund of input VAT on request, where

certain conditions are met, under the special VAT refund scheme, which has been in force since 1 January 2020. According to the Hungarian Government, those national provisions ensure compliance with the principle of VAT neutrality.

30 On that point, it should be noted that, according to settled case-law, the procedure laid down in Article 267 TFEU is based on a clear separation of functions between national courts and tribunals and the Court of Justice, and the latter is empowered only to rule on the interpretation or the validity of the acts of EU law referred to in that article. In that context, it is not for the Court to rule on the interpretation of provisions of national law or to decide whether the referring court's interpretation of them is correct (judgment of 26 September 2013, *Texdata Software*, C-418/11, EU:C:2013:588, paragraph 28 and the case-law cited).

31 It follows that the Court must take account of the factual and legal context of requests for preliminary rulings, as described in the reference for a preliminary ruling (judgment of 26 September 2013, *Texdata Software*, C-418/11, EU:C:2013:588, paragraph 29 and the case-law cited). It is therefore necessary to adhere to the interpretation of Hungarian law set forth in the reference for a preliminary ruling and on which the questions referred to the Court are predicated.

32 Therefore, the reference for a preliminary ruling is admissible.

Substance

33 Based on its questions, which must be considered together, the referring court is asking, in essence, whether Articles 63, 167 and 168, 178 to 180, 182 and 273 of the VAT Directive and the principles of VAT neutrality and proportionality must be interpreted as precluding a national measure pursuant to which a taxable person for VAT purposes whose tax identification number has been revoked on the ground that he or she had failed to file and publish his or her annual accounts, and then restored, following rectification of that omission, forfeits his or her right to deduct input VAT paid in the period preceding such revocation.

34 In order to answer those questions, in the first place, it should be borne in mind that, in accordance with the settled case-law of the Court, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation. The right of deduction provided for in Article 167 et seq. of the VAT Directive is an integral part of the VAT scheme and may not, in principle, be limited. In particular, that right may be exercised immediately in respect of all the taxes charged on transactions relating to inputs. The deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his or her economic activities. The common system of VAT consequently ensures the neutrality of taxation of all economic activities, whatever the purpose or results of those activities, provided that they are themselves subject in principle to VAT (judgment of 18 November 2021, *Promexor Trade*, C-358/20, EU:C:2021:936, paragraph 33 and the case-law cited).

35 The right to deduct VAT is, however, subject to compliance with both substantive requirements or conditions and formal requirements or conditions (judgment of 12 September 2018, *Siemens Gamesa Renewable Energy România*, C-69/17, EU:C:2018:703, paragraph 31). In that regard, it must be stated that the substantive requirements for the right of deduction are those which govern the actual substance and scope of that right, such as those provided for in Chapter 1 of Title X of the VAT Directive, entitled 'Origin and scope of right of deduction', whereas the

formal requirements for that right regulate the rules governing its exercise and monitoring, and the smooth functioning of the VAT system, such as the obligations relating to accounts, invoicing and filing returns (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 47 and the case-law cited).

36 In particular, with regard to the material requirements or conditions for the right of deduction to arise, it is apparent from the wording of Article 168(a) of the VAT Directive that, in order to have a right of deduction, it is necessary, first, that the relevant party be a 'taxable person' within the meaning of that directive and, secondly, that the goods or services relied on to confer entitlement to that right be used by the taxable person for the purposes of his or her own taxed output transactions, and that, as inputs, those goods or services must be supplied by another taxable person (judgment of 12 September 2018, *Siemens Gamesa Renewable Energy România*, C-69/17, EU:C:2018:703, paragraph 32 and the case-law cited).

37 As regards the formal conditions for the same right, for the purposes of the application of VAT and its monitoring by the relevant tax authority, Title XI of the VAT Directive lists certain obligations incumbent upon taxable persons liable for that tax, in particular the obligation to pay VAT resulting in particular from Articles 193 and 206 of that directive, the obligation to state when their activity as taxable persons commences, changes or ceases under Article 213 of that directive, the duty of identification for VAT purposes under Article 214 of the same directive, the obligation to keep proper accounts under Article 242 of the VAT Directive, the obligation to store all invoices under Article 244 of that directive and to submit a return within a given period under Articles 250 and 252 of that directive (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 48). Furthermore, as to the detailed rules governing the exercise of the right of deduction, which may be considered formal requirements or conditions, Article 178(a) of the VAT Directive provides that the taxable person must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238 to 240 of that directive (judgment of 12 September 2018, *Siemens Gamesa Renewable Energy România*, C-69/17, EU:C:2018:703, paragraph 33 and the case-law cited).

38 As the Court has ruled on several occasions, the fundamental principle of VAT neutrality requires that the deduction of input VAT should be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. Therefore, as long as the relevant tax authority has the necessary data to establish that the substantive requirements are satisfied, it cannot refuse to recognise the right to deduct VAT (see judgment of 18 November 2021, *Promexor Trade*, C-358/20, EU:C:2021:936, paragraph 34 and the case-law cited).

39 However, refusal of the right of deduction may be justified where non-compliance with formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been satisfied (judgment of 18 November 2021, *Promexor Trade*, C-358/20, EU:C:2021:936, paragraph 34 and the case-law cited). Indeed, such a refusal has more to do with not having the necessary data available to establish that the substantive requirements are met than with failure to comply with a formal requirement (judgment of 7 March 2018, *Dobre*, C-159/17, EU:C:2018:161, paragraph 35 and the case-law cited).

40 Similarly, it is settled case-law that the right to deduct VAT may be refused when it is established, in the light of objective evidence, that that right is being invoked fraudulently or improperly. Indeed, the prevention of fraud, tax evasion and potential abuse is an objective recognised and

promoted by the VAT Directive and EU law cannot be relied on by individuals for improper or fraudulent ends (judgment of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 43 and the case-law cited).

41 In any event, since the refusal of the right to deduct VAT is an exception to the application of the fundamental principle constituted by that right, it is incumbent upon the competent tax authorities to establish, to the requisite legal standard, that the objective evidence establishing the existence of fraud or abuse is present. It is for the national courts subsequently to determine whether the tax authorities concerned have established the existence of such objective evidence (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 52 and the case-law cited).

42 As part of determining that fact, it is for the national courts to take into account that, even if infringements of those formal obligations do not prevent the production of conclusive evidence that the substantive requirements giving rise to the right to deduct input VAT have been satisfied, such circumstances may establish the simplest case of tax evasion, in which the taxable person deliberately fails to satisfy the formal obligations incumbent upon him or her with the aim of evading payment of the tax (judgment of 18 November 2021, *Promexor Trade*, C-358/20, EU:C:2021:936, paragraph 39 and the case-law cited).

43 In the second place, it should be noted that, although, according to Article 167 and Article 179(1) of the VAT Directive, the right to deduct VAT is generally exercised during the same period as that during which it has arisen, namely at the time when the tax becomes chargeable, the fact remains that, pursuant to Articles 180 and 182 of that directive, a taxable person may be authorised to make a VAT deduction even if he or she did not exercise his or her right during the period in which the right arose, subject, however, to compliance with certain conditions and procedures determined by national legislation. In that regard, the Court recognised that, in order to guarantee the principle of legal certainty, the option of exercising the right to deduct VAT may be subject to a time limit, provided that that time limit is in accordance with the principles of equivalence and effectiveness (see, to that effect, judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraphs 44 to 47 and the case-law cited).

44 In those circumstances, the Court has clarified that the date on which the VAT return is filed or the invoice issued does not necessarily have an effect on the substantive requirements which confer the right to deduct that tax (judgment of 12 September 2018, *Siemens Gamesa Renewable Energy România*, C-69/17, EU:C:2018:703, paragraph 41).

45 In the third and last place, it should be noted that, in a case concerning a company which had exercised its right to deduct input VAT during the period in which its tax identification number had been revoked because it had failed to comply with all the declaration obligations stipulated by law, the Court, relying on the case-law referred to in the preceding paragraphs of this order, held that the VAT Directive must be interpreted as precluding national legislation which allows the tax authority concerned to refuse a taxable person, who has made acquisitions during the period in which his or her tax identification number had been revoked on account of a failure to submit tax returns, his or her right to deduct the VAT relating to those acquisitions using VAT returns submitted, or invoices issued, after the restoration of his or her tax identification number, on the sole ground that those acquisitions had been made during the period of deactivation, even though the substantive requirements were met and the right of deduction was not fraudulently or improperly invoked (judgment of 12 September 2018, *Siemens Gamesa Renewable Energy România*, C-69/17, EU:C:2018:703, paragraph 44).

46 In the present case, it is apparent from the reference for a preliminary ruling that, during October 2014, the applicant in the main proceedings carried out a genuine commercial activity in the course of which it paid input VAT. As the company had failed to comply with its obligation to file and publish its annual accounts for 2013 electronically, the Tax and Customs Directorate revoked its tax identification number on 8 April 2015. After that omission was rectified on 10 June that same year, that directorate restored the tax identification number of the applicant in the main proceedings. Following that restoration, the latter submitted an application for deduction of the input VAT paid in October 2014. There is nothing in the file before the Court to suggest that such an application was made after the expiry of the period available to the applicant in the main proceedings to exercise such a right of deduction. Finally, according to the findings of the referring court, there is no indication that the applicant in the main proceedings sought to exercise its right to deduct VAT fraudulently.

47 Having regard to the case-law referred to in paragraphs 34 to 45 of this order, it must be noted that, provided that it is established that the substantive requirements giving rise to the right to deduct VAT paid during the period preceding the revocation of a taxable person's tax identification number are satisfied and that that right has not been fraudulently or improperly invoked, that taxable person would, in circumstances such as those described in the previous paragraph, be entitled to claim that right after the restoration of his or her tax identification number following the rectification of the formal omissions which had led to its revocation.

48 That being the case, it is apparent from the reference for a preliminary ruling, which it is for the national court to ascertain, that, pursuant to Article 137(3) of the VAT Act, the revocation of a taxable person's tax identification number on account of a failure to comply with the obligation to file and publish annual accounts entails in itself the definitive forfeiture of the right to deduct input VAT paid in the period preceding such revocation. Therefore, when, as in the present case, that taxpayer's tax identification number is restored following the rectification of that failure, he or she is no longer entitled to assert that right, even though it is established that the substantive conditions required to be able to benefit from it are satisfied and that he or she has not exercised such a right fraudulently or improperly.

49 In its written observations, the Hungarian Government explained that revocation of a taxpayer's tax identification number is one of the instruments used to combat the black economy. That measure would have therefore been implemented mainly with a view to punishing fictitious taxpayers or tax evaders who do not carry out any genuine commercial activity and to excluding them quickly from economic life. Furthermore, the measure would help restore lawful behaviour for taxpayers who are genuinely engaged in commercial activity but in breach of the law.

50 In the light of the information contained in the reference for a preliminary ruling, the situation of the applicant in the main proceedings falls within the scope of cases of revocation of a taxable person's tax identification number in which that person, while having a genuine commercial activity, nevertheless carries it out in breach of the law.

51 In that regard, it is important to note that, while, as the Hungarian Government rightly points out, under Article 273 of the VAT Directive, Member States are free to adopt measures to ensure the correct collection of VAT and to prevent evasion, such as penalties for failure to comply with the formal conditions relating to exercising the right to deduct VAT, such measures must not, however, go beyond what is required to achieve those objectives and must not cast doubt over the neutrality of VAT (judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 41 and the case-law cited).

52 However, in so far as, under Article 137(3) of the VAT Act, the revocation of a taxable person's tax identification number entails the forfeiture of his or her right to deduct input VAT paid, it is important to note that the Court has ruled that, in view of the preponderant position which the right of deduction has in the common system of VAT, a penalty resulting in an absolute refusal of the right of deduction appears disproportionate where no evasion or detriment to the budget of the State is ascertained (judgment of 12 July 2012, *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 70).

53 Moreover, as is apparent from the Court's case-law, penalising non-compliance with formal obligations by refusing the right to deduct VAT, without taking account of the substantive requirements and, in particular, without examining whether those requirements are satisfied, goes further than is necessary to ensure the correct collection of the tax (see, to that effect, judgment of 18 November 2021, *Promexor Trade*, C-358/20, EU:C:2021:936, paragraph 42 and the case-law cited).

54 Finally, the Court has ruled that penalising the failure on the part of a taxable person to comply with the obligations relating to submitting accounts and tax returns by refusing his or her right to deduct VAT clearly goes further than is necessary to attain the objective of ensuring the correct application of those obligations, since EU law does not prevent Member States from imposing, where necessary, a fine or a financial penalty proportionate to the seriousness of the offence. However, the Court has indicated that the position could be different if the effect of breaching such formal requirements is to prevent the establishment of conclusive evidence that the substantive requirements have been satisfied (judgment of 12 September 2018, *Siemens Gamesa Renewable Energy România*, C-69/17, EU:C:2018:703, paragraphs 37 and 38 and the case-law cited).

55 It follows that a national measure which penalises the failure of a person liable for VAT to comply with the formal obligations incumbent on him or her by revoking his or her tax identification number and depriving him or her of his or her right to deduct input VAT paid during the period preceding that revocation, so that that taxable person is no longer entitled to exercise that right, even though he or she has remedied such a failure, his or her tax identification number has subsequently been restored, the effect of that failure has not been to make it impossible to establish whether the substantive conditions for entitlement to that right have been met and no improper or fraudulent conduct on the part of that taxable person has been established, goes beyond what is necessary to ensure the correct application of those obligations and the correct collection of the tax and to prevent tax evasion.

56 However, it is ultimately for the referring court to assess the compatibility of the national legislation concerned and its application by the Tax and Customs Directorate with the requirements referred to in paragraphs 51 to 54 of this order, taking into account all the circumstances of the main proceedings.

57 In the light of all the foregoing considerations, the answer to the questions referred must be that Articles 63, 167 and 168, 178 to 180, 182 and 273 of the VAT Directive and the principles of VAT neutrality and proportionality must be interpreted as precluding a national measure pursuant to which a taxable person for VAT purposes whose tax identification number was revoked on the ground that he or she had failed to file and publish his or her annual accounts, then restored, following the rectification of that omission, forfeits his or her right to deduct input VAT paid in

the period preceding such a revocation, even though the substantive requirements for entitlement to such deduction are satisfied and that taxable person has not acted fraudulently or improperly in order to qualify for that right.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court.

On those grounds, the Court (Seventh Chamber) hereby rules:

Articles 63, 167 and 168, 178 to 180, 182 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, and the principles of value added tax (VAT) neutrality and proportionality must be interpreted as precluding a national measure under which a taxable person for VAT purposes whose tax identification number was revoked on the ground that he or she had failed to file and publish his or her annual accounts, then restored, following the rectification of that omission, forfeits his or her right to deduct input VAT paid in the period preceding such a revocation, even though the substantive requirements for entitlement to such deduction are satisfied and that taxable person has not acted fraudulently or improperly in order to qualify for that right.

[Signatures]