



Reports of Cases

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 5 July 2017¹

Joined Cases C-374/16 and C-375/16

RGEX GmbH, in liquidation, represented by Rochus Geissel, liquidator

v

Finanzamt Neuss (C-374/16)

and

Finanzamt Bergisch Gladbach

v

Igor Butin (C-375/16)

(Request for a preliminary ruling from the Bundesfinanzhof (Federal Finance Court, Germany))

(Common system of value added tax — Directive 2006/112/EC — Article 178(a) — Right of deduction — Conditions of exercise — Article 226(5) — Details required on invoices — Address of the taxable person — Good faith meeting the requirements for deduction of input tax — Evasion of the law or abuse of rights — National procedures — Principle of effectiveness)

I. Introduction

1. The present cases raise two issues of interpretation of the EU rules on value added tax ('VAT').
2. The first issue is how the requirement, laid down in Article 226(5) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'),² to state the address of the taxable person on an invoice is to be interpreted. The referring court — two different chambers of the Bundesfinanzhof (Federal Finance Court, Germany) — asks whether the concept of 'address' must be construed as the place where the taxable person carries out his economic activity, or whether it suffices that the latter can simply be contacted there.
3. The second issue raised is whether and under what procedures a taxable person may argue that he was in good faith as regards the formal correctness of the invoices, when the authority finds that the author of those invoices is involved in a case of fraud or abuse, in order to deduct input VAT.

¹ Original language: English.

² OJ 2006 L 347, p. 1.

II. Legal framework

A. EU law

4. Article 168 of the VAT Directive provides:

‘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 178 of the VAT Directive, applicable at the material time in Case C-375/16, states³ :

‘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;

...’

6. Article 226 of the VAT Directive provides:

‘Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

...

- (5) the full name and address of the taxable person and of the customer;

...’

B. National law

7. Paragraph 14 of the Umsatzsteuergesetz (Law on turnover tax, ‘UStG’) provides:

- ‘(1) An invoice shall be any document by which an account relating to a supply of goods or services is settled, irrespective of the name given to that document in the course of business. The authenticity of the origin of the invoice, the integrity of its content and its legibility must be ensured. Authenticity of origin means the assurance of the identity of the issuer of the invoice ...

...

³ The provision applicable *ratione temporis* to Case C-374/16 was the one in force prior to the revision of the VAT Directive in 2010. However, that revision is immaterial for the purposes of present proceedings, since it did not affect the obligation to include the address on the invoice pursuant to Article 226 of the directive.

(4) An invoice must contain the following details:

1. the full name and address of the supplier and the customer; ...'

8. According to Paragraph 15 of the UStG:

'(1) The trader may deduct the following as input tax:

1. the tax lawfully due on supplies of goods and services which have been effected by another trader for the purposes of his business. The exercise of the right of deduction presupposes that the trader holds an invoice issued in accordance with Paragraphs 14 and 14a.'

9. Paragraph 163 of the Abgabenordnung (Tax Code, 'AO') provides:

'Taxes may be set at a lower amount and individual bases of taxation which increase the tax may be ignored in assessing the tax where the levy of the tax would be inequitable in the circumstances of the individual case. ...'

10. Paragraph 227 of the AO provides:

'The tax authorities may remit, in whole or in part, amounts arising from the tax debtor-creditor relationship where their collection would be unreasonable in the circumstances of the individual case; under the same conditions, amounts already paid may be refunded or credited.'

III. Facts, procedure and the questions referred

A. Case C-374/16

11. RGEX GmbH is a limited liability company that traded in motor vehicles. That company, established in 2007, has been in liquidation since 2015. The sole shareholder and director of RGEX was Mr Rochus Geissel, who now represents the company as liquidator.

12. In its original VAT return for 2008 RGEX declared, inter alia, tax-exempt intra-Union supplies of motor vehicles and 122 input tax deductions relating to motor vehicles obtained from EXTEL GmbH in an amount of EUR 1985443.42.

13. The competent Finanzamt (Tax Office, Germany) did not agree with RGEX's entries and by notice dated 31 August 2010 assessed VAT for 2008 in accordance with the findings of two VAT inspections. The intra-Union supplies of motor vehicles to Spain which had been declared as tax-exempt were found taxable, on the ground that the motor vehicles in question had not been delivered in Spain, but had been sold in Germany. The input tax deductions claimed on the basis of invoices issued by EXTEL were declared not deductible, because the latter was considered a 'ghost company', which did not have any establishment at the address on the invoice.

14. RGEX objected unsuccessfully to that decision. Subsequently, it challenged that decision before the Finanzgericht (Finance Court, Germany) with jurisdiction.

15. The Finanzgericht (Finance Court) dismissed to a large extent the action as unfounded. It held that, although the address indicated by EXTEL on its invoices was the seat of its registered office, that was merely a 'letterbox address'. At that address, EXTEL could only be contacted by post. Although a bookkeeping office was situated at the address, none of EXTEL's commercial activities were carried out there. The Finanzgericht (Finance Court) also dismissed RGEX's arguments based on alleged legitimate

expectations. In its view, Paragraph 15 of the UStG does not confer any protection in relation to the good faith as to the requirements of the right of deduction having been fulfilled. Consequently, issues of legitimate expectations could, at most, be taken into account only within the framework of a special procedure for equitable relief under Paragraphs 163 and 227 of the AO.

16. RGEX brought an appeal against the judgment of the Finance Court before the Bundesfinanzhof (Federal Finance Court). Having doubts as to the correct interpretation of EU law, that court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Does an invoice required by Article 168(a) in conjunction with Article 178(a) of [the VAT Directive] in order to exercise a right of deduction contain a “full address” within the meaning of Article 226(5) of [the same directive] if, on the invoice he issues in relation to the supply, the taxable person making the supply gives an address by which he may be reached by post but where he does not carry out any economic activity?
- (2) Having regard to the principle of effectiveness, does Article 168(a) in conjunction with Article 178(a) of [the VAT Directive] preclude a national practice which takes into account good faith on the part of the recipient of a supply in the satisfaction of the requirements for the right to deduct input tax only outside the tax assessment procedure, within the framework of a special equitable procedure? In that regard may Article 178(a) of [the VAT Directive] be relied upon?

B. Case C-375/16

17. Mr Igor Butin, who runs a car dealership in Germany, relied on invoices to deduct input VAT for a number of vehicles acquired from an undertaking, ‘Z’, and destined for resale. Since Z operates exclusively on the internet, the vehicles were delivered to Mr Butin or his employees sometimes on the street where Z had its corporate seat — even though Z did not run a dealership from that address — and sometimes in public places, such as railway station forecourts.

18. In the course of a tax audit carried out on Mr Butin, the auditor took the view that the input tax shown on the invoices issued by Z could not be deducted because the supplier address given by Z on those invoices was incorrect. Nothing at that address would indicate the presence of an undertaking; it served as a letterbox address from which Z merely collected the post. The auditor stated that Z had no fixed establishment in Germany.

19. The competent Tax Office shared that view and, on 13 September 2013, issued amended VAT assessments for 2009 to 2011. By order of 1 October 2013, it rejected Mr Butin’s request for a varied assessment to tax on equitable grounds under Paragraph 163 of the AO.

20. The Finanzgericht (Finance Court), before which Mr Butin challenged the decision of the Tax Office, upheld the action. That court took the view that the indication of an address in an invoice, as required under point 1 of the first sentence of Paragraph 14(4) of the UStG, did not mean that business activities had to take place there. That court found that, in the light of the advances in technology and changes in business practices, the existing national case-law was outdated. Moreover, the Finance Court found the action well founded also in relation to the alternative claim for a varied assessment to tax on equitable grounds. In its view, Mr Butin had done everything that could reasonably be required of him in order to verify Z’s status as a business and the accuracy of the content of the invoices.

21. The Tax Office brought an appeal against that judgment before the Bundesfinanzhof (Federal Finance Court). That court, having doubts as to the correct interpretation of EU law, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) Does Article 226(5) of [the VAT Directive] require the taxable person to indicate an address at which he carries [out] his economic activities?
- (2) If the answer to Question 1 is in the negative:
 - (a) Is a letterbox address sufficient as an indication of address pursuant to Article 226(5) of the VAT Directive?
 - (b) Which address must a taxable person who operates an undertaking (in the internet trade, for example) with no business premises indicate on an invoice?
- (3) In the event that the formal invoicing requirements laid down in Article 226 of the VAT Directive are not met, must the taxable person automatically be allowed to deduct input tax where no tax evasion has been committed or the taxable person did not know, and could not have known, of the connection with fraud or, in that event, does the principle of the protection of legitimate expectations presuppose that the taxable person has done everything that could reasonably be required of him in order to verify the accuracy of the content of the invoice?’

C. Procedure before the Court

22. By order of the President of the Court of 22 July 2016, Cases C-374/16 and C-375/16 were joined for the purposes of the written procedure and of the judgment.

23. Written observations have been submitted by Mr Butin, the German and Austrian Governments and the Commission.

IV. Analysis

A. Preliminary observations

24. As a preliminary point, it is to be borne in mind that the Court has consistently held that 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 economic activities. The principle of fiscal neutrality underpinning the common system of VAT ensures that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way.⁴ That principle is the reflection, in matters relating to VAT, of the principle of equal treatment.⁵

25. Article 168(a) of the VAT Directive enumerates the *material* conditions for the deduction of input tax. In order for operators to avail themselves of that right, three conditions must be met. Firstly, the interested party must be a taxable person within the meaning of that directive. Secondly, the goods or services relied on to give entitlement to that right must be used by the taxable person for the purposes of his own taxed output transactions. Thirdly the goods or services used as inputs must be supplied by another taxable person.⁶

⁴ Judgment of 14 February 1985, *Rompelman*, 268/83, EU:C:1985:74, paragraph 19.

⁵ Judgment of 10 April 2008, *Marks & Spencer*, C-309/06, EU:C:2008:211, paragraph 49.

⁶ Judgment of 22 October 2015, *PPUH Stehcamp*, C-277/14, EU:C:2015:719, paragraph 28.

26. With regard to the *formal* conditions governing the right of deduction, Article 178(a) of the VAT Directive provides that the taxable person must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI of that directive.⁷ Among those provisions, Article 226 of the directive is particularly relevant for the purposes of the present proceedings: it provides a list of elements which have to be included on an invoice. The fifth element on the list is ‘the full name and address of the taxable person and of the customer’.

27. The material conditions for the deduction of input tax are not at issue in these proceedings. The questions for a preliminary ruling concern only the fulfilment of the formal conditions for the right of deduction, from two angles. First, the referring court seeks an interpretation of the concept of ‘address’ within the meaning of Article 226 of the VAT Directive. Second, in the event that the Court were to interpret that concept as the address where the supplier of the goods or services carries out his economic activity, the referring court asks under what circumstances the taxable person may nevertheless invoke his good faith as regards the fulfilment of the conditions laid down in Article 226(5) of the VAT directive.

B. On the first question in Case C-374/16 and the first two questions in Case C-375/16

28. By its first question in Case C-374/16 and the first two questions in Case C-375/16, which I shall examine jointly, the referring court essentially asks whether Article 226(5) of the VAT Directive precludes national legislation that subjects the right to deduction of VAT to the indication on the invoice of the address where the issuer carries out its economic activity.

29. Indeed, according to the order for reference, the UStG — as traditionally interpreted by the national courts — requires ‘the address’ on the invoice to be that where the issuer exercises its economic activity. On the basis of that case-law, in the main proceedings the invoices of two undertakings were deemed to be in breach of the UStG because the issuer indicated only a letterbox address. As a consequence, the clients of that trader, such as the applicants in the main proceedings, could not rely on the invoices issued by the latter to deduct input tax.

30. For the reasons I shall explain in the following, I am of the view that Article 226(5) of the VAT Directive precludes national legislation which makes the right to deduction of input VAT subject to indication in the invoice of the address where the issuer carries out its economic activity.

1. Certain relevant principles

31. In the first place, certain important principles — stemming from settled case-law — provide the background against which the concept of ‘address’ must be assessed.

32. The Court has consistently held that the right to deduction of VAT is a *key element* of the system of VAT established by the VAT Directive and, consequently, it may not, in principle, be limited.⁸ *Deduction of input VAT is to be allowed if the substantive requirements are satisfied, even if the taxable persons have failed to comply with certain formal conditions. More specifically, the Court has found that holding an invoice showing the details mentioned in Article 226 of the VAT Directive is a formal condition, not a substantive condition, of the right to deduct VAT.*⁹

⁷ See judgment of 22 October 2015, *PPIUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 29.

⁸ See judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 37 and the case-law cited.

⁹ Judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 38.

33. In addition, Article 226 of the VAT Directive specifies that, without prejudice to the particular provisions of that directive, only the details listed in that article must obligatorily appear, for VAT purposes, on invoices issued pursuant to Articles 220 and 221 of that directive. According to settled case-law, Member States may not, therefore, make the exercise of the right to deduct VAT dependent on compliance with conditions relating to the content of invoices which are not expressly laid down in the VAT Directive.¹⁰

34. In the abovementioned cases, the Court has consistently adopted a realistic and pragmatic approach to the interpretation of the VAT rules, instead of following a more formalistic one. That approach seems at odds with national measures which not only interpret the requirement of ‘address’ on an invoice particularly strictly and formalistically, but also attach far-reaching consequences to failure to meet that requirement.

2. Textual interpretation of Article 226(5) of the VAT Directive

35. In the second place, as pointed out by the Commission, there is nothing in the text of the VAT Directive that supports such a strict interpretation of that requirement.

36. The usual sense of that concept,¹¹ refers to any type of address, including a ‘letterbox address’, provided that the person can in fact be contacted at that address.

37. The broad language employed in Article 9(1) of the VAT directive when defining a taxable person¹² equally supports that view.

3. Teleological interpretation of Article 226(5) of the VAT Directive

38. In the third place, and more importantly, a strict interpretation of the concept of ‘address’ is not justified in the light of the function of the invoice within the VAT system.

39. As the Court has pointed out, the invoice accounts for the economic transaction, allowing the competent tax authority, firstly, to monitor payment and declaration of the amount of the tax due by the issuer of the invoice and, secondly, the existence of the right to deduct VAT of the taxable person receiving the goods or services.¹³ As such, for the latter, the invoice is the essential means of proof of his right to deduct input VAT.

40. The obligation laid down in Article 226(5) of the VAT Directive to include the address of the issuer on the invoice has to be read in light of that double function of the invoice. The indication of the address of the issuer of the invoice serves — in combination with his name and VAT identification number — the purpose of establishing a link between a given economic transaction and a specific economic operator, the issuer of the invoice.¹⁴ In other words, it allows the issuer of the invoice to be identified.

¹⁰ See, to that effect, judgments of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 25, and of 15 July 2010, *Pannon Gép Centrum*, C-368/09, EU:C:2010:441, paragraphs 40 and 41.

¹¹ See, by analogy, judgment of 4 June 2015, *Commission v Poland*, C-678/13, not published, EU:C:2015:358, paragraph 46 and the case-law cited.

¹² That provision reads: “‘taxable person’ shall mean any person who, independently, carries out *in any place* any economic activity, whatever the purpose or results of that activity” (emphasis added).

¹³ See, to that effect, judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 27, referring to the Opinion of Advocate General Kokott in that same case (EU:C:2016:101).

¹⁴ See, to that effect, Opinion of Advocate General Kokott in *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:101, points 34 and 35.

41. That identification is essential for the tax authorities to be able to perform the necessary checks as to whether the amount of VAT is declared and paid.¹⁵ In turn, the identification also allows the taxable person to verify whether the issuer is a taxable person for the purposes of the VAT rules.

42. Against that background, I cannot share the view, expressed by the Austrian and German Governments, that the existence of actual economic activities, or a tangible presence of the trader's business at the address indicated on the invoice, is necessary to enable a correct identification of the issuer of the invoice and to contact him. Indeed, in accordance with Article 226 of the VAT Directive, the invoice also needs to include a number of other elements which serve that purpose. Among those, the VAT identification number of the supplier of the goods or services is of particular importance. That number can be easily verified by the authorities. In addition, the validity of that number can also be verified, including online, by anybody.

43. It should not be forgotten that, in order to obtain a VAT identification number, undertakings have to complete a registration process in which they are required to submit a local VAT registration form, along with supporting documentation. Member States are under an obligation to store certain data under the VAT rules.¹⁶ Thus, Member States are required to gather a variety of information regarding all the economic operators to which a VAT identification number has been attributed.¹⁷ They clearly do not need to look — only or especially — at the address appearing on an invoice to identify the issuer and determine where and how he can be contacted.

4. Interpretation under present-day conditions

44. In the fourth place, the requirement to exercise economic activities (or, in the alternative, to have premises) at the address indicated on the invoice, is — as pointed out by the referring court — unconvincing in the light of the varied ways in which businesses are organised and economic activities are carried out nowadays. That is especially true in view of the recent developments in the economy due, inter alia, to e-commerce, office sharing and teleworking.

45. Keeping in mind those developments, it is at times difficult to pin an economic activity down to one particular physical place. As Mr Butin points out in his written submissions, it is possible nowadays to run a business buying and reselling goods on an internet platform with only a computer and an internet connection from virtually anywhere in the world.

46. Accordingly, the requirement to exercise economic activities at the address indicated on the invoice (or to have premises) would be problematic with regard to those undertakings which do not carry out their business (wholly or mainly) from one specific place.

47. It cannot be argued that this 'disconnection' of the business premises from a certain place is a novel phenomenon that the EU legislature has not considered in the VAT Directive currently in force. The VAT Directive was recast in 2006, when the process of digitalisation already profoundly marked the economy of the European Union. Indeed, a number of provisions of that directive deal with issues such as, for example, electronic communications and services provided by electronic means.¹⁸

¹⁵ See, to that effect, Opinion of Advocate General Kokott in *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:101, point 34.

¹⁶ See, in particular, Article 17(1)(b) of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast) (OJ 2010 L 268, p. 1). That provision requires Member states to store in an electronic system, inter alia, 'data on the identity, activity, legal form and address of persons to whom it has issued a VAT identification number, collected pursuant to Article 213 of Directive 2006/112/EC, as well as the date on which that number was issued'.

¹⁷ See, by analogy, judgment of 1 March 2012, *Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. Wąsiewicz*, C-280/10, EU:C:2012:107, paragraphs 48 and 49. The national authorities can, furthermore, request any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Union transactions, and combat VAT fraud from the administrative authorities of other Member States by virtue of Regulation No 904/2010.

¹⁸ See, in particular, recitals 46, 47, 56, and 57 of the VAT Directive.

5. Interpretation in light of the case-law of the Court

48. In the fifth place, as the referring court itself observes, the ‘traditional’ interpretation of the UStG appears difficult to reconcile with the recent case-law of the Court and in particular with the judgment in *PPUH Stehcemp*.¹⁹

49. In that case, the Court found that the applicant was allowed to deduct VAT based on invoices issued by what the national court considered to be a non-existent trader. In assessing the facts of the case, the national court had observed that the building designated in the commercial register as being the trader’s corporate seat was in a ‘dilapidated state’. However, the Court took the view that the fact that no activity could be exercised in the corporate seat ‘[did] not mean that an activity could not be conducted in places other than the seat’. The Court added that ‘in particular, when the economic activity in question involves supplies of goods made in the context of several successive sales, the first purchaser and reseller of those goods can simply order the first seller to transport the goods at issue directly to the second purchaser, without that first purchaser and reseller necessarily having at his disposal the warehousing and transport facilities which are indispensable for supplying the goods at issue’.²⁰

50. That judgment supports the view that, for the purposes of the right to deduct VAT by the recipient of the goods or services, it is not a requirement that economic activities be carried on at the address indicated on the invoice. It is thus sufficient that the supplier may be promptly and effectively contacted at that address.

51. Contrary to the observations of the German and Austrian Governments, that position is not called into question by the Court’s judgment in *Planzer Luxembourg*.²¹

52. That case concerned a legal issue different from that in the cases at hand. In *Planzer Luxembourg* the Court was asked to rule on whether an undertaking was genuinely established in the European Union. To that end, the Court interpreted inter alia the terms ‘business’ and ‘fixed establishment’ for the purposes of the Thirteenth Directive.²² The criteria mentioned by the Court in that case — to which the German and Austrian Governments refer — are therefore relevant for evaluating the genuine establishment of an undertaking in the European Union, but they do not provide any useful interpretative element for determining what address can be indicated on the invoice.

53. In the light of the foregoing, I propose to answer the first question in Case C-374/16 and the first two questions in Case C-375/16 to the effect that Article 226(5) of the VAT Directive precludes national legislation that subjects the right to deduction of VAT to the indication on the invoice of the address where the issuer carries out its economic activity.

C. The second question in Case C-374/16 and the third question in Case C-375/16

54. The second question in Case C-374/16 and the third question in Case C-375/16 concern the consequences that might arise from the good faith of a taxable person in the formal correctness of invoices issued by another taxable person. In essence, the referring court asks the Court whether, and if so how, a taxable person should be able to invoke his good faith when the address indicated on the invoice is incomplete or erroneous.

¹⁹ Judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719.

²⁰ See judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 35.

²¹ Judgment of 28 June 2007, *Planzer Luxembourg*, C-73/06, EU:C:2007:397.

²² Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ 1986 L 326, p. 40).

55. Since those questions are based on the premiss that a taxable person has to exercise an economic activity at the address indicated on the invoice, there is no need to answer them in the light of the proposed answer to the first question in Case C-374/16 and the first two questions in Case C-375/16.

56. Nevertheless, I will address the issues raised by those questions, in the event that the Court's answer to the previous questions diverges from the view I have expressed above. I shall, in particular, focus on whether, and if so how, a taxable person should be able to invoke his good faith in the formal correctness of the address of the issuer of an invoice, when the authority finds that the latter may be involved in fraud or irregularities.

1. Good faith regarding the integrity of the invoice

57. The issue of fraud or irregularities seems relevant in the present cases since, from both orders for reference, in the main proceedings questions have arisen concerning the fraudulent nature of the issuers' establishment of the invoices or of the transactions related to those invoices.

58. In that regard it is to be borne in mind that the Court has recently held in *PPUH Stehcemp* that a taxable person loses his right of deduction where he knew or should have known that, by his purchase, he was taking part in a transaction connected with VAT fraud. By contrast, where the material and formal conditions for the creation and exercise of a right to deduction are met, it is incompatible with the VAT Directive 'to impose a penalty, in the form of refusing that right to a taxable person who did not know, and could not have known, that the transaction concerned was connected with fraud committed by the supplier, or that another transaction forming part of the chain of supply prior or subsequent to that transaction carried out by the taxable person was vitiated by VAT fraud'.²³ That is the expression in EU law of the principle which the referring court refers to as 'good faith' or 'legitimate expectations'.

59. Consequently, a taxable person can be refused the right to deduction if it is shown that he acted recklessly, without showing the diligence that can be expected from a reasonably circumspect trader.²⁴ Clearly, the measures which may, in a particular case, reasonably be required from a taxable person in order to satisfy himself that transactions are not connected with fraud or abuse depend essentially on the circumstances of that particular case.²⁵ It is, however, unreasonable to oblige a taxable person to carry out in-depth or time-consuming checks on the accuracy and correctness of the formal data included in each invoice of all of his suppliers. That would be neither practical nor economically feasible.

60. Moreover, the Court has already stated that it is in principle 'for the tax authorities to carry out the necessary inspections of taxable persons in order to detect VAT irregularities and fraud as well as to impose penalties on the taxable person who has committed those irregularities or fraud'.²⁶

61. Obviously, when a taxable person finds concrete indications which appear to point to fraud or abuse, he may be expected to make certain additional inquiries regarding his supplier, in order to ascertain the trustworthiness of the supplier.²⁷ However, in that case too, the tax authorities may not oblige a taxable person, in view of the risk that the right to deduct may be refused, to undertake

²³ See judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraphs 48 and 49.

²⁴ See, in particular, judgments of 27 September 2007, *Teleos and Others*, C-409/04, EU:C:2007:548, paragraphs 65 and 66; of 21 February 2008, *Netto Supermarkt*, C-271/06, EU:C:2008:105, paragraphs 24, 25 and 27; and of 21 December 2011, *Vlaamse Oliemaatschappij*, C-499/10, EU:C:2011:871, paragraphs 25 and 26.

²⁵ See judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 51.

²⁶ See, in particular, judgment of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 62.

²⁷ See judgments of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 60; and of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 52.

complex and far-reaching checks, de facto transferring their own investigative tasks to him.²⁸ It is unthinkable, for example, that a taxable person should be required to verify that the address of a supplier on an invoice is where the latter actually exercises its economic activities or has business premises, or that the supplier is lawfully or genuinely established at that address.

62. Thus, the right to deduction can be refused if the taxable person was not in good faith as regards the existence of related fraud or abuse (because he was, or should have been, aware of it). However, and importantly, that is true regardless of whether the formal conditions in the invoices relating to those transactions are fulfilled.

63. In other words, if, in certain circumstances, there might be a more complex duty of care requiring a taxable person to be more cautious in his commercial dealings with a supplier, that duty may derive only from the fact that the taxable person was, or should have been, aware of possible frauds or irregularities committed by the latter. That duty cannot, conversely, be justified by the mere fact that the address included in an invoice is incomplete, erroneous or not genuine. Firstly, unless the error is manifest, it is difficult to ascertain the correctness of the address. Secondly, an error may also appear to be a mere oversight which it may be difficult for a taxable person to notice.

64. Therefore, the case-law of the Court does not allow an interpretation of the VAT rules, such as that proposed by the referring court, according to which, if the formal conditions for deduction are not fulfilled, deduction should be granted *only* when the taxable person has taken every measure that could reasonably be required of him in order to satisfy himself that the content of the invoice was correct. That interpretation would, de facto, introduce a significant limitation of the right of deduction, which the VAT rules do not support.

65. That interpretation would also have the effect of unduly switching the burden of proof to the recipient of the invoices regarding the possible involvement in, or awareness of, the fraud. To follow up on what I have stated above at point 60, the Court has held that ‘it is for the tax authorities, having found fraud or irregularities committed by the issuer of the invoice, to establish, on the basis of objective factors and without requiring the recipient of the invoice to carry out checks which are not his responsibility, that that recipient knew, or should have known, that the transaction on which the right to deduct is based was connected with VAT fraud’.²⁹ In that context, it should also be noted that it may not always be easy for a taxable person to prove, to the requisite standard, that he has done, in the words of the referring court in Case C-375/16, ‘everything that could reasonably be required of him in order to verify the accuracy of the content of the invoices’.

66. Unlike what is suggested by the referring court, that does not imply that the formal conditions laid down in Article 226 of the VAT Directive become meaningless. As the Commission rightly points out, even if the fulfilment of all those conditions is not essential for a taxable person to be allowed deduction, Member States may still compel the taxable persons to act in order to complete and/or correct the invoices, and lay down penalties for failure to comply with the formal conditions, provided that those measures do not go further than what is necessary to attain the objective of ensuring the correct collection of VAT and of preventing evasion, and provided that those measures do not undermine the neutrality of the VAT regime.³⁰

²⁸ See judgments of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 65; and of 31 January 2013, *LVK*, C-643/11, EU:C:2013:55, paragraph 62.

²⁹ See judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 50. See also judgment of 6 December 2012, *Bonik*, C-285/11, EU:C:2012:774, paragraph 43.

³⁰ See judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraphs 41 and 42, and Opinion of Advocate General Bot in *Senatex*, C-518/14, EU:C:2016:91, point 45.

2. Effective judicial protection of the right to deduct

67. In Case C-374/16, the referring court has also raised the issue of whether the fact that the applicant can claim the right to deduct only in a separate equitable procedure is consistent with Article 168(a), in conjunction with Article 178(a), of the VAT Directive, having regard to the principle of effectiveness. The referring court explains that under the national rules, the applicant may not invoke the argument of good faith or legitimate expectations in the ordinary tax assessment procedure, but has to bring separate proceedings.

68. Since the indication of a letterbox address complies with the provisions of Article 226(5) of the VAT Directive, that issue is not of any relevance to the main proceedings. Indeed, if my understanding is correct, the applicants in the main proceedings should be able to claim deductions in the ordinary tax assessment procedures, without the need to have recourse to the special equitable procedure.

69. In any event, I shall still address that issue, in the event that some of the invoices at issue in the main proceedings do not comply with the formal conditions set out in Article 226 of the VAT Directive for other reasons.

70. In accordance with the principle of procedural autonomy, it is, in the absence of EU rules, for the Member States to establish internal procedures to prevent VAT fraud. In that regard it is for the domestic legal system of each Member State to designate the authorities responsible for combating VAT fraud and to lay down detailed procedural rules to safeguard rights which individuals derive from EU law. However, such rules may not be less favourable than those governing similar domestic actions (principle of equivalence) and may not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness).³¹

71. As regards the principle of effectiveness, the Court has held that the question whether a national procedural provision makes the exercise of rights arising under the EU legal order impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. For those purposes, account must be taken of the basic principles which lie at the basis of the domestic judicial system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure.³² It is, in principle, for the referring court to determine whether the national measures are compatible with those principles, having regard to all the circumstances of the case.³³

72. In the present case, the Court does not have sufficiently detailed information on the special equitable procedure (and on the differences between that procedure and the ordinary tax assessment procedure) to be able to rule on whether the national procedural rules such as those at issue in the main proceedings comply with the provisions of the VAT Directive. Thus, in accordance with the case-law referred to above, it is for the referring court to decide, in the light of the principles identified in the case-law of the Court, whether the right of a taxable person to invoke his good faith regarding the formal correctness of invoices is effectively protected in a procedure such as the special equitable procedure set out in Paragraphs 163 and 227 of the AO.

³¹ Judgment of 12 February 2015, *Surgicare*, C-662/13, EU:C:2015:89, paragraph 26.

³² Judgment of 12 February 2015, *Surgicare*, C-662/13, EU:C:2015:89, paragraph 28.

³³ Judgment of 12 February 2015, *Surgicare*, C-662/13, EU:C:2015:89, paragraph 27.

73. In its analysis, the referring court should, in my view, especially consider whether the length, complexity and costs associated with that special procedure create disproportionate difficulties for the taxable person. Those difficulties are, arguably, more significant when, for claims which essentially concern the same or related legal issues and/or the same or related transactions, the taxable person is required to commence, in parallel, two or more sets of judicial proceedings.³⁴

74. Even though more specific guidance cannot be given, I must nonetheless express my doubts regarding the compatibility of the national procedural rules at issue with EU law, in the light of certain elements mentioned in the order for reference. The right to claim deduction of input VAT for a taxable person stems from the provisions of the VAT Directive and not from equity. That is true regardless of whether the relevant invoices are fully compliant with Article 226 of that directive.

75. In other words, even in those circumstances, the authorities have no discretion as to whether the taxable person should be permitted to deduct input VAT. Accordingly, from the procedural angle, I do not perceive any substantial difference between the situation of a taxable person who has a right to deduction when the formal conditions of the invoices are fulfilled and the situation where that person has such a right *despite* formal non-compliance. I fail to see the reason why a taxable person should not be entitled to invoke such a right in the context of the ordinary tax assessment procedure.

76. That issue is, however, for the national court to decide.

77. On the basis of the above, I propose to answer the second question in Case C-374/16 and the third question in Case C-375/16 to the effect that, on a proper construction, Article 168(a) and Article 178(a) of the VAT Directive preclude national legislation according to which, where the formal conditions of invoices are not fulfilled, deduction is granted only if the taxable person proves that he took every measure that could reasonably be required of him in order to satisfy himself that the content of the invoice was correct. It is for the national court to assess whether the national procedural rules under which a taxable person may invoke his good faith regarding the integrity of the invoice are compatible with the principle of effectiveness, in the light in particular of the length, complexity and costs associated with the relevant procedures.

V. Conclusion

78. In conclusion, I propose that the Court answer the questions referred for a preliminary ruling by the Bundesfinanzhof (Federal Finance Court, Germany) as follows:

- Article 226(5) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive') precludes national legislation that subjects the right to deduction of value added tax to the indication on the invoice of the address where the issuer carries out its economic activity.
- Article 168(a) and Article 178(a) of the VAT Directive preclude national legislation according to which, where the formal conditions of invoices are not fulfilled, deduction is granted only if the taxable person proves that he took every measure that could reasonably be required of him in order to satisfy himself that the content of the invoice was correct.
- It is for the national court to assess whether the national procedural rules under which a taxable person may invoke his good faith regarding the integrity of the invoice are compatible with the principle of effectiveness, in the light in particular of the length, complexity and costs associated with the relevant procedures.

³⁴ See, to that effect, judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 51.