



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

26 April 2018 *

Reference for a preliminary ruling — Taxation — Directive 2006/112/EC — Common system of value added tax (VAT) — Deduction of input tax — Right to a refund of VAT — Transactions relating to a tax period that has already been the subject of a tax inspection which has concluded — National legislation — Possibility for the taxable person to correct tax returns which have already been covered by a tax inspection — Precluded — Principle of effectiveness — Fiscal neutrality — Legal certainty)

In Case C-81/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Suceava (Court of Appeal, Suceava, Romania), made by decision of 23 January 2017, received at the Court on 14 February 2017, in the proceedings

Zabrus Siret SRL

v

Direcția Generală Regională a Finanțelor Publice Iași — Administrația Județeană a Finanțelor Publice Suceava,

THE COURT (Ninth Chamber),

composed of C. Vajda, President of the Chamber, E. Juhász (Rapporteur) and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Romanian Government, by R. Radu, C.M. Florescu and R. Mangu, acting as Agents,
- the European Commission, by L. Lozano Palacios and L. Radu Bouyon, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

* Language of the case: Romanian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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 principles of fiscal neutrality, effectiveness and proportionality.
- 2 The request has been made in proceedings between Zabrus Siret SRL ('Zabrus') and Direcția Generală Regională a Finanțelor Publice Iași — Administrația Județeană a Finanțelor Publice Suceava (Directorate-General of Public Finance of Iași — Regional Public Finance Administration of Suceava, Romania) ('the Directorate-General'), concerning whether the taxable person may correct value added tax (VAT) returns in order to claim the right to deduct VAT.

Legal context

EU law

- 3 Article 167 of the VAT Directive provides:

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

- 4 Article 168 of that directive states:

'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 and services, carried out or to be carried out by another taxable person;

...'

- 5 Under the first paragraph of Article 179 of the VAT Directive, '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'.

- 6 Article 180 of that directive is worded 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.'

- 7 Under Article 182 of the VAT Directive, 'Member States shall determine the conditions and detailed rules for applying Articles 180 and 181'.

- 8 Article 183 of the VAT Directive provides:

'Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period.'

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.’

9 Article 250 of the directive provides:

‘1. 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.

2. Member States shall allow, and may require, the VAT return referred to in paragraph 1 to be submitted by electronic means, in accordance with conditions which they lay down.’

10 Article 252 of the directive states:

‘1. The VAT return shall be submitted by a deadline to be determined by Member States. That deadline may not be more than two months after the end of each tax period.

2. The tax period shall be set by each Member State at one month, two months or three months.

Member States may, however, set different tax periods provided that those periods do not exceed one year.’

Romanian law

11 Ordonanța Guvernului nr.° 92/2003 privind Codul de procedură fiscală (Government Order No 92/2003 establishing the Tax Procedure Code, *Monitorul Oficial al României*, Part I, No 863 of 26 September 2005), in the version in force at the material time (‘the Tax Procedure Code’), provides in Article 84, entitled ‘Correction of tax returns’:

‘(1) Tax returns may be corrected by the taxable person on his own initiative within the limitation period for the right to establish tax obligations.

(2) Tax returns may be corrected whenever the taxable person becomes aware of errors in the initial return, by filing a corrected return.

(3) In the case of [VAT], errors that appear in VAT returns shall be corrected on the basis of the provisions of the Tax Code. Clerical errors in a [VAT] return shall be corrected on the basis of the procedures approved by order of the President of the Agenția Națională de Administrare Fiscală (National Agency for Fiscal Administration (ANAF)).

(4) Tax returns cannot be filed or corrected after the withdrawal of any reservation expressed in the subsequent inspection, with the exception of situations where the correction is necessary as a result of the fulfilment or non-fulfilment of a condition laid down by law, which requires correction of the taxable amount and/or of the related tax.

(5) For the purposes of the present article, “errors” shall mean errors relating to the amount of taxes, charges and contributions, taxable goods and income, or any other aspect of the taxable amount.

(6) In the event that, during a tax inspection, the taxpayer files or corrects the tax returns relating to the periods and taxes, contributions and other income that are the subject of that tax inspection, they shall not be taken into consideration by the tax authorities.’

12 Article 105 of the Tax Procedure Code, containing the ‘Rules concerning tax inspections’, provides:

‘ ...

(3) A tax inspection shall be carried out once for each tax, contribution or other sum payable to the consolidated general budget and for each tax period.

...

(5) A tax inspection shall be carried out in accordance with the principles of independence, unity, autonomy, hierarchy, territoriality and decentralisation.

...

(8) At the end of the tax inspection, the taxable person shall be obliged to provide a statement in writing, under his own responsibility, from which it is apparent that all the documents and information requested for the tax inspection have been made available.

(9) The taxable person shall be obliged to comply with the measures laid down in the document drawn up at the time of the tax inspection, within the period and under the conditions laid down by the tax inspectorate.’

13 Article 105a of the Tax Procedure Code, relating to ‘Rules concerning review’, is worded as follows:

‘(1) By way of derogation from Article 105(3), the tax inspector may decide to carry out a review of a given period.

(2) A “review” shall mean a tax inspection carried out following the appearance of additional data unknown to the tax inspectors at the time of the inspections which affect the results of those inspections.

(3) “Additional data” shall mean information, documents or other written material obtained following a cross-check without prior notice, or communicated to the tax authorities by the bodies responsible for prosecution or by other public authorities or obtained in any way by the inspectorate, that are such as to alter the results of the previous tax inspection.

(4) At the beginning of the review procedure, the tax inspectorate shall be required to communicate to the taxable person the decision to carry out the review, which may be contested in accordance with the conditions set out in the present Code. The provisions relating to the content and communication of the inspection notice are likewise applicable to the review decision.’

14 Article 106 of that code, entitled ‘Obligation to cooperate on the part of the taxable person’, provides, in paragraph 1, that the taxable person is obliged to cooperate in establishing the facts of a fiscal nature. He is obliged to provide information and to make available in the place where the tax inspection is carried out all the documents and other material necessary to clarify the factual situations that are relevant from a tax perspective.

15 Annex 1 to Ordinul nr.° 179 pentru aprobarea instrucțiunilor de corectare a erorilor materiale din deconturile de taxă pe valoarea adăugată (Order No 179 approving the Guidelines for correcting clerical errors in value added tax returns) of 14 May 2007 ('Order No 179/2007') provides in points 1, 3.1, 4.1 and 4.2:

'1. [VAT] returns filed by persons liable for VAT may be corrected, as regards clerical errors, by the competent tax authorities, either on the initiative of those authorities or at the request of the taxable person.

...

3.1 Clerical errors in a [VAT] return may be corrected within the limitation period of five years from 1 January of the year following the year in which the tax return requiring correction was filed.

...

4.1 The present Guidelines do not permit correction of a [VAT] return for tax periods that have already been the subject of a tax inspection or in respect of which a tax inspection is ongoing.

4.2 By way of derogation from point 4.1, clerical errors in a [VAT] return may be corrected on the basis of a notice of steps to be taken communicated by the tax inspectorate. In such a situation, the request for correction of the clerical error submitted by the taxable person shall be accompanied by a copy and by the original of that notice.'

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

16 Zabrus was the subject of a VAT inspection for the period from 1 May 2014 to 30 November 2014. That inspection was concluded by the drawing up of a report of 26 January 2015.

17 On 25 May 2015, Zabrus filed a VAT return for April 2015 opting for a VAT refund, requesting, inter alia, the reimbursement of two amounts totalling 39 637 Romanian lei (RON) and RON 26 627, respectively. The first amount was recorded in that return as a result of the correction, after the conclusion of the abovementioned tax inspection, of an accounting note offsetting VAT for July 2014. The second amount results from the correction, in February 2015, of transactions in 2014, in respect of which Zabrus identified the relevant supporting documents in its accounts only after the conclusion of that tax inspection.

18 Subsequently, Zabrus was the subject of a tax inspection covering the period from 1 December 2014 to 30 April 2015. That tax inspection culminated in a report issued on 9 July 2015.

19 The tax authorities refused to reimburse the VAT amounts totalling RON 39 637 and RON 26 627 on the ground that the sums claimed related to transactions carried out during a tax period, prior to the period under inspection, which had already been the subject of a VAT inspection ending on 26 January 2015. They stated that, in accordance with the applicable national legislation, the principle of the unity of tax inspections precluded the reimbursement of the amounts requested by Zabrus because, in respect of the period already subject to inspection, no irregularity concerning VAT contributions had been found and the inspection bodies did not adopt any measure laying down steps to be taken by Zabrus.

20 Zabrus, by various administrative procedures, tried unsuccessfully to establish its right to reimbursement of the VAT. In particular, both its request for a review for the period from 1 May 2014 to 30 November 2014 and its request for correction of clerical errors in the VAT returns for the months of May to October 2014 were rejected.

- 21 On 22 October 2015, Zabrus brought an action before the Tribunalul Suceava (Regional Court, Suceava, Romania) for annulment of the decision of the Directorate-General rejecting the VAT reimbursement relating to those amounts. In its application, Zabrus stated that the deduction of VAT is a taxpayer's right which cannot be restricted if the substantive requirements are satisfied, even if certain formal requirements have not been complied with. It also maintained that the tax authorities' refusal to assess the VAT, based on the principle of the unity of tax inspections, is tantamount to denying the right of deduction by imposing additional substantive and formal conditions incompatible with EU law, with the result that a disproportionate measure unduly onerous for the taxable person is involved.
- 22 The Directorate-General argued that, in accordance with the provisions contained in the Tax Procedure Code and Order No 179/2007, transactions relating to a period that has already been the subject of a tax inspection cannot be corrected or reviewed except on the initiative of the tax authorities, in the event that they discover new information as a result of cooperation with other institutions or when a measure laying down steps to be taken has been adopted at the time of the previous inspection. However, those situations do not arise in the present case.
- 23 By judgment of 31 March 2016, the Tribunalul Suceava (Regional Court, Suceava) dismissed the action brought by Zabrus as unfounded on the ground that the review of a period previously covered by a tax inspection requires the existence of new information, in addition to the information already inspected, unknown to the authorities at the time of the first inspection, the late production of which is not imputable to the taxable person subject to that inspection or to the tax authorities.
- 24 That court found that the principle of unity of tax inspections and that of certainty in legal relations would be infringed if it were possible, following inspection, to submit supporting documents or to take into consideration recording errors altering the amount to be reimbursed under different conditions from those restrictively laid down by the legislature in that area. It also stated that the loss of the right of deduction is not disproportionate since the recording error and the subsequent discovery of the supporting documents are both imputable to Zabrus.
- 25 In addition, that court noted that the error in recording the VAT to be reimbursed, in the amount of RON 39 637, and the subsequent discovery of supporting documents for declaring VAT, in the amount of RON 26 627, are not additional information, within the meaning of the national legislation, but clerical errors in the VAT returns which may no longer be corrected, since the tax inspection for the period from 1 May 2014 to 30 November 2014, concluded by the report of 26 January 2015, in the absence of anomalies being found that were such as to alter the taxable amount for VAT, was not followed by the adoption of a measure laying down steps to be taken by Zabrus making such a correction possible.
- 26 On 31 March 2016 Zabrus appealed against that judgment to the Curtea de Apel Suceava (Court of Appeal, Suceava, Romania), arguing that the right to reimbursement of VAT cannot be excluded by imposing additional substantive or formal conditions, such as the conditions laid down by the national legislation, for the correction of clerical errors or for review of a period previously subject to a tax inspection. Invoking the principles of fiscal neutrality and proportionality, Zabrus maintained that the extreme solution adopted by the tax authorities, endorsed by the court of first instance, removes its right to deduct VAT on grounds which infringe the VAT Directive.
- 27 The referring court considers that Zabrus cannot rely on the case-law of the Court on fiscal neutrality, since it was refused the right to deduct VAT not because of the failure to comply with a formal requirement of the right of deduction but because of the principle of a single tax inspection, arising from the principle of legal certainty, the latter principle being recognised and protected under EU law and the case-law of the Court.

- 28 In the view of the referring court, it is also necessary to take into account the possibility, provided for by the national legislation, of conducting a review of a period which has already been the subject of a tax inspection, but that possibility is available only on the initiative of the tax authorities, where there is additional information obtained subsequently as a result of cooperation between State institutions, a provision considered to be compatible with EU law by the Court in its judgment of 6 February 2014, *Fatorie* (C-424/12, EU:C:2014:50).
- 29 The referring court considers that the principles of neutrality, proportionality and legal certainty must also be assessed in the present case not only in the light of Zabrus's lack of diligence but also in the light of the fact that the offsetting and reimbursement notes were issued by a municipal tax service.
- 30 In those circumstances, the Curtea de Apel Suceava (Court of Appeal, Suceava) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does [the VAT Directive], together with the principles of fiscal neutrality and proportionality, preclude, in circumstances such as those in the main proceedings, an administrative practice and/or an interpretation of the provisions of national legislation which prevent the assessment and recognition of the right to reimbursement of VAT resulting from adjustments in respect of transactions carried out during a period, preceding the most recent inspection period, which has already been the subject of a tax inspection and in which the tax authorities did not find any anomalies that were such as to alter the taxable amount for VAT, notwithstanding the fact that those provisions may be interpreted as meaning that the tax authorities may review a period which has previously been the subject of a tax inspection in the light of additional data and information obtained subsequently as a result of cooperation between State authorities and institutions?
- (2) Must [the VAT Directive] and the principles of fiscal neutrality and proportionality be interpreted as precluding, in circumstances such as those in the main proceedings, national rules of a legislative nature which deny the possibility of correcting clerical errors in VAT returns for tax periods which have already been the subject of a tax inspection, the only exception being where the correction is made on the basis of a measure laying down the steps to be taken, communicated by the tax inspectorate at the time of the previous inspection?’

Consideration of the questions referred

- 31 By its questions, which should be considered together, the referring court asks, in essence, whether Articles 167, 168, 179, 180 and 182 of the VAT Directive and the principles of effectiveness, fiscal neutrality and proportionality must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, by way of derogation from the five-year limitation period imposed by national law for the correction of VAT returns, prevents, in circumstances such as those in the main proceedings, a taxable person from making such a correction in order to claim his right of deduction on the sole ground that that correction relates to a period that has already been the subject of a tax inspection.
- 32 As regards the right of deduction, it must be borne in mind that, according to settled case-law, 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 the EU legislature (see, *inter alia*, judgments of 21 June, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 37, and of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 35).

- 33 As the Court has repeatedly held, 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, the right of deduction is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, inter alia, judgments of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 38, and of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 36).
- 34 The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his 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 (see, inter alia, judgments of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 39, and of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, point 37).
- 35 Although the right to deduct VAT is subject to compliance with the substantive and formal conditions laid down by the VAT Directive, it is apparent from the request for a preliminary ruling that the referring court's questions arise solely from the fact that the right of deduction was refused because it was not possible for the taxable person to correct its VAT return in that the request for correction related to a period that had already been the subject of a tax inspection which had concluded.
- 36 In that regard, it should be noted that, under Article 167 and the first paragraph of Article 179 of the VAT Directive, the right of deduction is generally exercised during the same period as that during which it has arisen, that is to say, at the time the tax becomes chargeable.
- 37 Nevertheless, pursuant to Articles 180 and 182 of the VAT Directive, a taxable person may be authorised to make a deduction even if he did not exercise his right during the period in which the right arose, subject to compliance with certain conditions and procedures determined by national legislation (see judgment of 12 July 2012 in *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 46 and the case-law cited).
- 38 In that regard, it is apparent from the case-law of the Court that the possibility of exercising the right of deduction without any temporal limit would be contrary to the principle of legal certainty, which requires the tax position of the taxable person, in the light of his rights and obligations vis-à-vis the tax authority, not to be open to challenge indefinitely. Therefore, a limitation period the expiry of which has the effect of penalising a taxable person who has not been sufficiently diligent and has failed to claim deduction of input tax, by making him forfeit his right of deduction, cannot be regarded as incompatible with the regime established by the VAT Directive, in so far as, first, that limitation period applies in the same way to analogous rights in tax matters founded on domestic law and to those founded on EU law (principle of equivalence) and, second, that it does not in practice render impossible or excessively difficult the exercise of the right of deduction (principle of effectiveness) (see, to that effect, judgment of 12 July 2012, *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraphs 48 and 49 and the case-law cited).
- 39 Here, it is clear from the national legislation, cited in the order for reference, that the right to deduct VAT is, in Romanian law, subject to the general limitation period of five years. Nevertheless, the exercise of the right of deduction is subject to a shorter limitation period in the event of a tax inspection. It is, in principle, no longer possible for the taxable person to correct VAT returns for tax periods that have already been the subject of inspection by the tax authorities. Thus, in circumstances such as those in the main proceedings, a taxable person cannot correct his VAT returns. The Romanian Government submits that that restriction follows from the principle of a single tax inspection and that the principle of legal certainty requires that such an inspection takes place on only one occasion.

- 40 Although it does not follow from the information provided by the referring court that the national legislation at issue in the main proceedings lays down, in respect of VAT, a scheme different from that laid down in other tax matters under national law, the principle of effectiveness, on the other hand, precludes such legislation in so far as it is liable to deny, in circumstances such as those at issue in the main proceedings, a taxable person the opportunity to correct his VAT returns when he has been the subject of a tax inspection concerning the tax period relating to that correction, even though the five-year limitation period laid down by that legislation has not yet elapsed.
- 41 When, as in circumstances such as those in the main proceedings, the tax inspection begins immediately after the filing of a tax return or shortly thereafter, the taxable person is, under that legislation, deprived of the opportunity to correct his VAT return, so that the exercise of the right to deduct VAT by the taxable person becomes impossible in practice or, at the very least, excessively difficult.
- 42 Therefore, the fact that national legislation, such as that issue in the main proceedings, deprives the taxable person of the opportunity to correct his VAT return by shortening the time available to him for that purpose is incompatible with the principle of effectiveness.
- 43 Furthermore, the principles of fiscal neutrality and proportionality also preclude legislation such as that at issue in the main proceedings.
- 44 The principle of VAT neutrality requires, according to settled case-law, the deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements (see, to that effect, judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 45).
- 45 However, in the main proceedings, it is precisely the failure to comply with certain formal requirements laid down by the national legislation at issue which resulted in Zabrus being refused the deduction of VAT in respect of Zabrus, even though it had requested a correction of its returns in order to show that the substantive conditions for deduction of the two amounts at issue were met.
- 46 The non-compliance with formal requirements, which may be remedied, is not such as to call into question the proper functioning of the VAT system.
- 47 Thus, by the application of national legislation such as that at issue in the main proceedings, a part of the VAT burden will remain definitively with the taxable person, which is contrary to the case-law cited in paragraph 34 above.
- 48 As regards the principle of proportionality, it is true that the national legislature is able to attach penalties to the formal obligations of taxable persons to encourage them to comply with those obligations, in order to ensure the proper working of the VAT system.
- 49 Accordingly, an administrative fine could, inter alia, be imposed on a negligent taxable person who corrects his VAT return by relying on documents proving his entitlement to a VAT deduction which were in his possession at the time his VAT return was filed or following the discovery of a recording error altering the amount of VAT to be reimbursed.
- 50 However, the Member States must, in accordance with the principle of proportionality, employ means which, whilst enabling them effectively to attain the objective pursued by national legislation, are the least detrimental to the principles laid down by EU legislation, such as the fundamental principle of the right to deduct VAT (judgment of 10 July 2008, *Sosnowska*, C-25/07, EU:C:2008:395, paragraph 23).

- 51 Therefore, in a situation such as that at issue in the main proceedings, in view of the dominant position which the right of deduction has in the common system of value added tax, a penalty consisting of 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 and the case-law cited).
- 52 However, there is nothing in the documents before the Court to suggest evasion or detriment to the budget of the State.
- 53 Lastly, the Romanian Government's argument that the legislation at issue in the main proceedings, justified by the principle of a single tax inspection, follows from the principle of legal certainty must be rejected.
- 54 A national tax inspection system, such as that at issue in the main proceedings, which does not allow a taxable person to correct his VAT return, although it provides for such correction where it is made by implementing a measure of a tax authority and provides for the tax authorities to be able to conduct a review where they have new information, is not intended to safeguard the rights of tax payers and does not appear to serve the application of the principle of legal certainty. In reality, such a system, coupled with those exceptions, is implemented mainly to ensure the effectiveness of tax inspections and the functioning of the national administration.
- 55 No other conclusion can be drawn from the judgment of 6 February 2014, *Fatorie* (C-424/12, EU:C:2014:50). It admittedly follows from that judgment that a taxable person cannot rely, within the limitation period, on the principle of legal certainty to oppose the authorities revoking a decision by which they granted the taxable person the right to deduct VAT, while ordering him, following a fresh investigation, to pay that tax together with default interest (see, to that effect, judgment of 6 February 2014, *Fatorie*, C-424/12, EU:C:2014:50, paragraph 51). On the other hand, it does not follow from that judgment that the tax authorities may rely, within the limitation period, on that principle to oppose the correction by the taxable person of a VAT return in respect of a period which has already been subject to a tax inspection.
- 56 Accordingly, the answer to the questions referred is that Articles 167, 168, 179, 180 and 182 of the VAT Directive and the principles of effectiveness, fiscal neutrality and proportionality must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, by way of derogation from the five-year limitation period imposed by national law for the correction of VAT returns, prevents, in circumstances such as those in the main proceedings, a taxable person from making such a correction in order to claim his right of deduction on the sole ground that that correction relates to a period that has already been the subject of a tax inspection.

Costs

- 57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Articles 167, 168, 179, 180 and 182 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 effectiveness, fiscal neutrality and proportionality must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, by way of derogation from the five-year limitation period imposed by national law for the correction of value added tax (VAT) returns, prevents, in circumstances such as those in the main

proceedings, a taxable person from making such a correction in order to claim his right of deduction on the sole ground that that correction relates to a period that has already been the subject of a tax inspection.

[Signatures]