Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

14 May 2020*

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Deduction of input tax – Excess VAT – Excess VAT withheld following the initiation of a tax inspection procedure – Request for refund of the portion of the excess relating to transactions not covered by that procedure – Refusal of the tax authority)

In Case C-446/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 31 May 2018, received by the Court on 9 July 2018, in the proceedings

Agrobet CZ s.r.o.

v

Finanční úřad pro Středočeský kraj,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, P.G. Xuereb and T. von Danwitz, Judges,

Advocate General: J. Kokott,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 11 September 2019,

after considering the observations submitted on behalf of:

– Agrobet CZ s.r.o., by M. Jelínek and O. Moravec, advokáti,

– the Czech Government, by M. Smolek, J. Vláčil and O. Serdula, acting as Agents,

– the Spanish Government, by S. Jiménez García, acting as Agent,

– the European Commission, by L. Lozano Palacios and M. Salyková, acting as Agents,

* Language of the case: Czech.

after hearing the Opinion of the Advocate General at the sitting on 19 December 2019,

gives the following

Judgment

1 The present request for a preliminary ruling concerns the interpretation of Articles 179, 183 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) ('the VAT Directive') and of the principle of the neutrality of value added tax (VAT).

2 The request has been made in the course of a dispute between Agrobet CZ s.r.o. ('Agrobet') and the Finanční úřad pro Středočeský kraj (Tax Office for the Central Bohemia Region, Czech Republic) concerning the latter's withholding of excess VAT following the initiation of a tax investigation procedure.

Legal context

EU law

3 The second subparagraph of Article 1(2) of the VAT Directive provides:

'On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.'

4 Article 167 of that directive provides:

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

5 Article 168(a) of that directive is worded 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;

…'

6 The first paragraph of Article 179 of the VAT Directive states:

'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.'

7 The first paragraph of Article 183 of the VAT Directive is worded as follows:

'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.'

8 The first paragraph of Article 273 of the VAT Directive provides:

'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.'

Czech law

9 Paragraph 105(1) of the zákon č. 235/2004 Sb., o dani z přidané hodnoty (Law No 235/2004 on value added tax), in the version applicable to the case in the main proceedings, provides:

'When, following an assessment of excess VAT, the refundable overpayment is more than 100 [Czech crowns (CZK) (approximately EUR 3.94)], it shall be refunded automatically to the taxable person within 30 days of the assessment. The foregoing shall not apply where the refundable overpayment results from a change in the tax assessed following a tax adjustment.'

10 Paragraph 85(1), (3) and (4) of the zákon č. 280/2009 Sb., daňový řád (Law No 280/2009 establishing the Tax Code), in the version applicable to the case in the main proceedings ('the Tax Code'), provides:

'1. A tax inspection may be carried out in relation to tax liabilities, the returns of a taxable person or other circumstances which are of decisive importance in the correct determination and assessment of the tax relating to a given tax procedure.

…

3. The tax authority shall examine the subject matter of the tax inspection within the established scope. The scope of the tax inspection may be expanded or reduced during the course of its performance, in accordance with the procedure for its initiation.

4. A tax inspection may be carried out together with other tax procedures relating to the same taxable person. The tax authority may initiate a tax inspection also for other tax procedures by expanding an ongoing tax inspection relating to a different tax procedure.'

11 Paragraph 89(4) of the Tax Code states:

'Where it appears from an ordinary tax return duly submitted or from a supplementary tax return that a taxable person is entitled to a tax deduction, the tax authority shall, where there are doubts, request the taxable person to provide the necessary clarification within 30 days of the date of submission of the return, such period to commence not before the last day of the period prescribed for the submission of the ordinary tax return or supplementary tax return.'

12 Paragraph 90(2) and (3) of the Tax Code is worded as follows:

‘2. In the event that the doubts persist and that the amount of the tax has not been determined with sufficient credibility, the tax authority shall inform the taxable person of the outcome of the clarification procedure. The taxable person may, within 15 days of the date on which he or she was informed of the outcome of the clarification procedure, request that evidence continue to be taken, in which case he or she shall proffer additional evidence.

3. Where the tax authority finds that there are grounds for continuing to take evidence, it shall initiate a tax inspection in accordance with those grounds. Where the tax authority finds no grounds for continuing to take evidence, it shall adopt a decision on the assessment of the tax within 15 days of the date on which the taxable person requested that evidence continue to be taken.’

13 Paragraph 148 of the Tax Code provides:

‘1. The tax may not be assessed after the expiry of the period prescribed for assessing the tax, which is three years. The period for assessing the tax shall commence on the day on which the period for the submission of the ordinary tax return expires or on the day on which the tax became due if no obligation has arisen to submit an ordinary tax return.

…

3. Where, prior to the expiry of the period for assessing the tax, a tax inspection has been commenced, an ordinary tax return has been submitted, or a request has been made for the submission of an ordinary tax return, the period for assessing the tax shall commence again on the date on which the relevant action was taken.

4. The period prescribed for assessing the tax shall be suspended from:

…

(f) the date on which a request for international cooperation in the administration of taxes is made until the date of receipt of a response to such request or until the date on which a notice of termination of international cooperation in the administration of taxes is sent in the particular case.

5. The period for assessing the tax shall expire at the latest 10 years after it commenced in accordance with subparagraph 1.

…’

14 Paragraph 254a of the Tax Code states:

‘1. Where a clarification procedure relating to an ordinary tax return or an additional tax return from which it appears that the taxable person is entitled to a tax deduction continues for more than five months, the taxable person shall be entitled to interest on the tax deduction as determined by the tax authority.

2. The taxable person shall be entitled to interest on the tax deduction from the day following the expiry of the period of five months commencing on the date of initiation of the clarification

procedure lasting more than five months until the day of the refund of the tax deduction or its application to the payment of arrears, but no later than the expiry of the period for its refund.

3. Interest on the tax deduction shall correspond to the annual "repo" reference rate set by the Czech National Bank plus one percentage point, applicable from the first day of the relevant six-month period.

…

6. Interest awarded pursuant to this provision shall be applied to any compensation awarded for material or non-material loss caused to the taxable person by an unlawful decision of the tax authority or by an incorrect or improper administrative procedure conducted by the tax authority.'

The dispute in the main proceedings and the question referred

15 In February 2016, Agrobet submitted two VAT returns, for the tax periods December 2015 and January 2016, in which it reported excess VAT of CZK 2 958 167 (approximately EUR 116 462) and of CZK 1 559 241 (approximately EUR 61 386) respectively. The Tax Office for the Central Bohemia Region, which had serious doubts as to the validity of certain rapeseed oil transactions carried out by Agrobet during those two tax periods, initiated tax inspection procedures limited to those transactions. Specifically, since the rapeseed oil had, according to the tax office's findings, originated in Poland and had been traded in the Czech Republic without further processing before then being reshipped by Agrobet to Poland, that tax office queried whether the requisite conditions had been met in order for Agrobet to benefit from VAT exemption in respect of the rapeseed oil supplies and to deduct the input VAT paid on the purchases thereof. The referring court states that the Tax Office for the Central Bohemia Region had already initiated similar procedures relating to the tax periods corresponding to October and November 2015.

16 Agrobet appealed against the initiation of those procedures, arguing in particular that, since the tax authority's doubts related to only a small portion of the excess VAT declared, the withholding of the entire amount of that excess for several successive tax periods imposed a burden on it that was disproportionate to the objective of preventing tax evasion. Agrobet accordingly requested payment of the undisputed portion of the excess VAT, that is to say, the portion of the excess that related to transactions not covered by those tax inspection procedures.

17 The Tax Office for the Central Bohemia Region rejected Agrobet's complaints, whereupon, in May 2016, Agrobet requested the Odvolací finanční ředitelství (Tax Appeals Directorate, Czech Republic) to examine the manner in which those complaints had been dealt with, reiterating in particular that the withholding for several successive months of the excess VAT that it had declared, a substantial portion of which was not questioned by the tax authority, was disproportionate. The Tax Appeals Directorate held that request to be unfounded, on the ground that the Tax Code made no provision for the issue of a partial notice of assessment and that VAT always relates to the entire tax period, not to just some of the taxable supplies.

18 Agrobet then applied to the Krajský soud v Praze (Regional Court, Prague, Czech Republic) for an order requiring the tax authority to assess the excess VAT for the tax period October 2015 in the amount that was not covered by the tax investigation procedures in question. By a judgment of

4 October 2016, that court granted Agrobet's application, referring in particular to Article 183 of the VAT Directive and to the judgment of 18 December 1997, *Molenheide and Others* (C-286/94, C-340/95, C-401/95 and C-47/96, EU:C:1997:623).

19 As the Tax Appeals Directorate refused to apply the ruling in the judgment of 4 October 2016 to the tax periods December 2015 and January 2016, Agrobet made a fresh application to the Krajský soud v Praze (Regional Court, Prague) for a decision in the same terms relating to those tax periods.

20 The judgment of the Krajský soud v Praze (Regional Court, Prague) of 4 October 2016 was in the meantime set aside by judgment of the referring court of 11 May 2017 on the ground that, since the Tax Code made no express provision for drawing up a partial notice of assessment, the tax authority could not assume the power to do so in the absence of a legal basis. The referring court has also stated that it does not follow from the judgment of 18 December 1997, *Molenheide and Others* (C-286/94, C-340/95, C-401/95 and C-47/96, EU:C:1997:623), that national law must permit the partial assessment of excess VAT in the sum of the undisputed amount.

21 Referring to that judgment of 11 May 2017, the Krajský soud v Praze (Regional Court, Prague), by judgment of 13 June 2017, dismissed Agrobet's application relating to the tax periods December 2015 and January 2016.

22 Agrobet brought before the referring court an appeal on a point of law against that judgment of 13 June 2017, arguing that, as it did not permit the issue of a partial notice of assessment, national procedural law was incompatible with the VAT Directive and with the case-law of Court of Justice. According to Agrobet, EU law, and in particular the principle of proportionality, permitted the withholding of the refund of excess VAT following the initiation of a tax inspection procedure only to the extent necessary for attaining the objective pursued by that procedure. Given that a portion of the excess VAT was not called into question by the tax authority and was not within the scope of that tax inspection procedure, it could not, in the view of Agrobet, be concluded that the withholding of the undisputed portion of the excess VAT was proportionate.

23 The Tax Office for the Central Bohemia Region argued before the referring court that, since excess VAT related to the entire tax period, it could only arise as an indivisible whole. In its opinion, there cannot therefore be any undisputed portion of excess VAT such as might be the subject of a partial assessment and refund to the taxable person. That tax office also took the view that it does not follow from the judgment of 18 December 1997, *Molenheide and Others* (C-286/94, C-340/95, C-401/95 and C-47/96, EU:C:1997:623), that the tax authorities of the Member States are required to make such partial refunds.

24 The referring court acknowledges that the national measures adopted pursuant to Article 273 of the VAT Directive to combat tax evasion may entail a limitation of the right to deduct VAT and thus lead the Member States, in the exercise of their procedural autonomy under Article 183 of that directive, to withhold excess VAT in the context of a tax inspection. While noting, with reference to, inter alia, paragraphs 33 and 53 of the judgment of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298), that the withholding of excess VAT must not go beyond what is necessary for the successful completion of the investigation and that any economic disadvantage suffered by the taxable person must be compensated for by the payment of interest in such a way as to ensure compliance with the principle of fiscal neutrality, the referring court points out that, in accordance with paragraph 49 of the judgment of 28 July 2016, *Astone* (C-332/15,

EU:C:2016:614), measures to prevent tax evasion must not be used in such a way that they would have the effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT.

25 The referring court essentially takes the view that national legislation, like the Czech legislation, under which taxable supplies which have been declared and the legitimacy of which is not in question, or the legitimacy of which is not even permitted to be proven, are not recognised during a certain period of time systematically undermines the right to deduct VAT. Thus, according to the referring court, where the validity and correctness of certain supplies are not called into question in the context of a given tax period, the tax authorities should not be permitted to withhold the excess VAT that relates to those supplies. Where the conditions for the refund of the portion of the excess VAT that relates to such supplies are met, that portion of the excess should not be withheld any longer and should be refunded.

26 It was in those circumstances that the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is it consistent with European Union law and in particular with the principle of VAT neutrality for a Member State to adopt a measure which makes the assessment and payment of part of a VAT deduction claimed conditional on the completion of a procedure applying to all taxable transactions in a given tax period?'

The question referred

27 By its question, the referring court is essentially asking whether Articles 179, 183 and 273 of the VAT Directive, considered in the light of the principle of fiscal neutrality, must be interpreted as precluding national legislation which makes no provision for tax authorities to refund, prior to the conclusion of a tax inspection procedure relating to a VAT return in which an excess is reported for a given tax period, the portion of that excess which relates to transactions that were not within the scope of that procedure at the time when it was initiated.

28 It should be noted at the outset that this question has arisen in a context in which, according to the information provided by the referring court, the tax authority has stated that the tax investigation procedure in question is limited to just some of the transactions reported in the VAT return and in which, therefore, it appears that, at the time when the procedure was initiated, the portion of the excess VAT which relates to transactions falling outside the scope of the procedure could be regarded as not in dispute and thus potentially amenable to a refund prior to the conclusion of the procedure – an eventuality for which Czech law, however, makes no provision.

29 As regards, first of all, the possibility that the excess VAT arising in a given tax period might be apprehended in such a way that an undisputed portion thereof could be identified, in appropriate cases, it must be borne in mind that, under the first paragraph of Article 179 of the VAT Directive, the taxable person must 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. The first paragraph of Article 183 of that directive clarifies that, where, for a given tax period, the amount of deductions exceeds the amount of VAT due, there is an excess that may either be carried forward to the following period or refunded – the option of refunding having been chosen in Czech law.

30 It is clear from the combined provisions of the first paragraph of Article 179 and of the first paragraph of Article 183 of the VAT Directive that excess VAT is the result of an arithmetical calculation which the taxable person performs for the entire tax period, with the consequence that excess VAT can appear in a VAT return only in the form of a single figure.

31 However, this comprehensive nature of the calculation of excess VAT does not mean, as the Czech and Spanish Governments and the European Commission have essentially argued in their written and oral submissions, that excess VAT must be regarded as an indivisible whole that cannot be divided into a disputed portion and an undisputed portion each relating to specific transactions that come within or fall outside the scope of a tax inspection procedure such as that in question in the main proceedings.

32 In the first place, as the Advocate General noted in point 34 of her Opinion, it is clear from the wording of Article 179 of the VAT Directive that that article merely lays down an obligation, in its first paragraph, for the taxable person to make the deduction from the total amount of VAT due. Similarly, the wording of the first paragraph of Article 183 of the directive does not in itself preclude the carrying-forward or refunding of portions or fractions of the excess VAT.

33 This interpretation is corroborated by the context in which Articles 179 and 183 of the VAT Directive appear. Indeed, as the Court has already held, while Articles 178 to 183 of that directive relate only to the conditions for the exercise of the right of deduction, the existence of that right, which arises at the time when the deductible tax becomes chargeable, is covered by Articles 167 to 172 of the directive, which appear in Chapter 1, headed 'Origin and scope of right of deduction', of Title X thereof (see, to that effect, judgment of 28 July 2011, *Commission* v *Hungary*, C-274/10, EU:C:2011:530, paragraph 44 and the case-law cited). It follows that the VAT Directive draws a clear distinction between substantive requirements governing the right to deduct and formal requirements governing that right (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 47). Accordingly, while the taxable person is obliged to comply with the rules concerning exercise of the right to deduct VAT, and in particular must submit a single VAT return for the entire tax period, he cannot, in the absence of provisions in the directive to the contrary, then be prevented from claiming only in part the rights and material entitlements which he derives, in relation to each transaction, from that Chapter 1.

34 In the second place, it is clear from the second subparagraph of Article 1(2) and from Article 168(a) of the VAT Directive that the taxable person is liable to pay VAT or may claim a deduction of VAT in respect of each transaction that he carries out. As the Advocate General noted in point 36 of her Opinion, the right to deduct input VAT is to be understood in relation to each individual transaction.

35 The Court has also made it clear that, while the Member States have a certain freedom in determining the conditions referred to in Article 183 of the VAT Directive, those conditions cannot undermine the principle of fiscal neutrality by making the taxable person bear the burden of the VAT in whole or in part. In particular, such conditions must enable the taxable person, in appropriate circumstances, to recover the entire amount of the credit arising from that excess VAT. This implies that the refund is to be made within a reasonable period of time by a payment in liquid funds or equivalent means, and that, in any event, the method of refund adopted must not entail any financial risk for the taxable person (see, to that effect, judgment of 10 July 2008, *Sosnowska*, C-25/07, EU:C:2008:395, paragraph 17 and the case-law cited). Conditions which, in a situation such as that at issue in the main proceedings, do not allow a taxable person to identify a particular portion of the excess VAT which he regards as undisputed in fact prevent that taxable

person from availing himself of the existence of an undisputed portion and claiming a refund of that portion, and thus oblige him to bear, in part, the burden of the tax, in breach of the principle of fiscal neutrality.

36 It follows that Articles 179 and 183 of the VAT Directive, considered in the light of the principle of fiscal neutrality, cannot be interpreted as excluding, as a matter of principle, the possibility of identifying, for a given tax period, an undisputed portion of the excess VAT declared in a VAT return capable of resulting in a partial carrying-forward or a partial refund of that excess.

37 In the second place, with regard to the question of the conditions under which a portion of excess VAT may be regarded as not in fact being disputed, in the context of a tax investigation procedure which a tax authority has limited, in accordance with national law, to certain transactions within a tax period, it must be observed that, since excess VAT is the result of the arithmetical calculation referred to in paragraphs 30 and 31 of the present judgment, an undisputed portion of excess VAT may be identified only if the amount of tax due and the amount of deductible tax relating to those transactions are themselves not in dispute.

38 However, if a tax authority is not able, when it initiates a tax investigation procedure or in the course of such a procedure, to rule out the possibility that, on the conclusion of that procedure, the amount of tax due and the amount of deductible tax relating to the transactions which fall outside the scope of the procedure might vary from the figures declared by the taxable person, then the view cannot be taken that the corresponding portion of the excess VAT in question is not in dispute. The tax authority will also need to satisfy itself, when it initiates the tax investigation procedure or in the course thereof, that the information used in calculating that portion cannot be called into question prior to the conclusion of the procedure.

39 It follows that, in order for any portion of excess VAT to be regarded as undisputed, it is not sufficient for the taxable person merely to assert unilaterally that an undisputed portion of excess VAT exists or that an undisputed portion appears to exist merely by virtue of the fact that, when it initiated the tax investigation procedure in question, the tax authority limited that procedure to only some of the taxable person's transactions. On the contrary, the tax authority must satisfy itself, first, that the possible irregularities which it suspects could not, if proven, have any effect on the amount of VAT due or on the amount of deductible VAT relating to the transactions which fall outside the scope of that procedure or, consequently, on the portion of excess VAT that appears to be undisputed and, secondly, that it will not decide to broaden the scope of the inspection procedure so as to include some or all of the transactions not initially under review. Such matters must be clearly, precisely and unequivocally apparent from all of the documentation assembled for the tax inspection procedure and from the relevant circumstances of the case.

40 It must be borne in mind in this context, first, that the period for refunding excess VAT may, as a general rule, be extended in order to carry out a tax investigation without there being any need for such an extended period to be regarded as unreasonable provided that the extension does not go beyond what is necessary for the successful completion of that investigation (judgment of 12 May 2011, *Enel Maritsa Iztok 3*, C-107/10, EU:C:2011:298, paragraph 53 and the case-law cited) and, secondly, that, when the refund to the taxable person of such an excess is not made within a reasonable period, the principle of fiscal neutrality of the VAT system requires that the financial loss incurred by the taxable person by reason of the unavailability of the sums of money at issue be compensated for through the payment of default interest (judgment of 28 February 2018, *Nidera*, C-387/16, EU:C:2018:121, paragraph 25 and the case-law cited).

41 Moreover, since the objective of combatting tax evasion, avoidance and abuse is recognised and encouraged by the VAT Directive, and in particular by Article 273 thereof, and since EU law cannot be relied on for abusive or fraudulent ends, it is for the national authorities and courts to refuse the right of deduction, if it is shown, in the light of objective factors, that that right is being relied on for fraudulent or abusive ends (see, to that effect, judgments of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 50, and of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 34). Accordingly, in tax inspection procedures, tax authorities must, with the ultimate objective of correct tax assessment, not only dispel any doubts that they may have with regard to the correctness and propriety of certain of the taxable person's transactions, but also satisfy themselves that any irregularities that they may detect are not in fact more serious than they suspect.

42 It must also be pointed out that, as the referring court stated in its argument set out in paragraph 25 of the present judgment, the Czech legislation at issue in the main proceedings does not even allow taxable persons the option of adducing evidence to prove their claims regarding the existence of an undisputed portion of excess VAT, something which is contrary to the requirements that flow from the general principle of good administration.

43 In this connection, it must first be recalled that, where a Member State implements EU law, the requirements pertaining to the right to sound administration, which reflects a general principle of EU law, and in particular the right of every person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a tax inspection procedure (see, by analogy, judgment of 8 May 2014, *N.*, C-604/12, EU:C:2014:302, paragraphs 49 and 50).

44 Secondly, it is important to note that that principle of good administration requires administrative authorities, such as the tax authority in question in the main proceedings, when carrying out their inspection duties, to conduct a diligent and impartial examination of all the relevant matters so that they can be sure that, when they adopt a decision, they have at their disposal the most complete and reliable information possible for that purpose (see, to that effect, judgment of 2 September 2010, *Commission* v *Scott*, C-290/07 P, EU:C:2010:480, paragraph 90 and the case-law cited). Furthermore, that obligation to act diligently, a corollary of which is the right of every person to have his or her affairs handled by the administrative authorities impartially, fairly and within a reasonable period of time, essentially requires those authorities to examine, carefully and impartially, all the relevant facts of the case, including and especially those relating to claims made by taxable persons such as Agrobet (see, by analogy, judgment of 22 October 1991, *Nölle*, C-16/90, EU:C:1991:402, paragraphs 30 to 35).

45 That case-law applies equally in the case where a taxable person asserts that the suspicions which a tax authority entertains regarding the correctness and propriety of some of the transactions reported in a VAT return can have no repercussions for the transactions which fall outside the scope of the tax inspection procedure in question or for a portion of the excess VAT declared in that return and that, consequently, an undisputed portion of the excess VAT exists. A taxable person may have a legitimate interest in seeking to obtain a decision of the tax authority confirming that the procedure will remain confined to certain transactions alone, particularly in a case where such transactions represent only a small proportion of the taxable person's economic activity.

46 That being so, it must be emphasised that national legislation which, in the context of the measures adopted by a Member State pursuant to Article 273 of the VAT Directive, does not permit a taxable person to adduce such evidence or permit the tax authorities to take a decision in that regard is contrary to the principle of good administration and consequently not compatible with the VAT Directive.

47 It should be observed, moreover, that the option for the taxable person to argue that there is an undisputed portion of the excess VAT for a given tax period, with a view to obtaining the refund of that portion before the conclusion of the tax inspection procedure, does not automatically mean that the tax authority will be under an obligation to refund that portion early, even if it acknowledges that the portion in question is undisputed. It is clear from Article 183 of the VAT Directive that, regardless of what conditions they lay down, Member States are required to refund or carry forward excess VAT only if the deductions are greater than the VAT due for the tax period in question. Consequently, the obligation which that provision imposes on Member States to make a refund or to carry forward is subject to the existence of excess VAT for the entire tax period in question.

48 That being so, it must be held that, where a taxable person invokes the existence of an undisputed portion of excess VAT in the context of a tax inspection procedure, the tax authority is required to refund or to carry forward only that part of the excess VAT which it is able, having regard to the concerns which it has raised in the procedure and in the light of the relevant circumstances of the case, to identify clearly, precisely and unequivocally, regardless of the outcome of the inspection procedure, with reference to the entire tax period to which the initial VAT return relates. Because that obligation to make a refund or carry forward relates to a specific tax period, it necessarily exists not in relation to the amount of tax due and the amount of deductible tax relating to the transactions which fall outside the scope of the tax inspection procedure in question, which the tax authority will have identified as undisputed, but in relation to the portion of the excess VAT that will remain regardless of the outcome of the procedure and which alone may be definitively regarded as being not in dispute. It must be observed in this connection that that undisputed portion of the excess VAT may, depending on the case, be less than the excess portion which is claimed by the taxable person and which relates to the aforementioned amounts, which the tax authority will have recognised as being not in dispute.

49 In the present case, it is for the referring court to ascertain whether, in the light of any evidence that Agrobet may have provided, the tax authority identified or should have identified clearly, precisely and unequivocally, at any stage of the tax inspection procedure at issue in the main proceedings, the existence of an undisputed portion of excess VAT and, in particular, whether that authority established or should have established that the amount of tax due and the amount of deductible tax relating to the transactions falling outside the scope of that procedure were not capable of varying, before the conclusion of the procedure, from the figures declared by the taxable person. It is also for the referring court to ascertain whether the tax authority was, or should have been, able, having regard to the concerns which it raised in the procedure and in the light of all of the documentation for the procedure and the relevant circumstances of the case, to determine in the same way that excess VAT, the amount of which might be less than that relating to the transactions falling outside the scope of the review, would remain regardless of the outcome of the inspection procedure. In its determination, the referring court should take particular account of the possible sanctions which the taxable person might incur if a partial or provisional refund is made of the portion of excess VAT claimed in the event that the tax inspection proves successful.

50 If the tax authority had not been able to make such findings, no criticism may be made of its refusal to draw up a partial notice of assessment before the conclusion of the tax inspection procedure at issue in the main proceedings.

51 Having regard to the foregoing considerations, the answer to the question referred is that Articles 179, 183 and 273 of the VAT Directive, read in the light of the principle of fiscal neutrality, must be interpreted as not precluding national legislation which makes no provision for tax authorities to refund, prior to the conclusion of a tax inspection procedure relating to a VAT return in which an excess is declared for a given tax period, the portion of that excess which relates to transactions that were not within the scope of the inspection procedure at the time when it was initiated, in so far as it is not possible to determine clearly, precisely and unequivocally that excess VAT, the amount of which might be less than that relating to the transactions falling outside the scope of that inspection procedure, would remain regardless of the outcome of that procedure, this being a matter which it is for the referring court to determine.

Costs

52 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 (Second Chamber) hereby rules:

Articles 179, 183 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of the principle of fiscal neutrality, must be interpreted as not precluding national legislation which makes no provision for tax authorities to refund, prior to the completion of a tax inspection procedure relating to a value added tax (VAT) return in which an excess is declared for a given tax period, the portion of that excess which relates to transactions that were not within the scope of the inspection procedure at the time when it was initiated, in so far as it is not possible to determine clearly, precisely and unequivocally that excess VAT, the amount of which might be less than that relating to the transactions falling outside the scope of that inspection procedure, would remain regardless of the outcome of that procedure, this being a matter which it is for the referring court to determine.

[Signatures]