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Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

18 November 2021 (\*)

(Reference for a preliminary ruling – Harmonisation of fiscal legislation – Common system of value added tax (VAT) – Directive 2006/112/EC – Right to deduct VAT – Revocation of the VAT identification of a taxable person – Refusal of the right of deduction – Formal requirements)

In Case C-358/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Oradea (Court of First Instance, Oradea, Romania), made by decision of 9 July 2020, received at the Court on 30 July 2020, in the proceedings

**Promexor Trade SRL**

v

**Direcția Generală a Finanțelor Publice Cluj – Administrația Județeană a Finanțelor Publice Bihor,**

THE COURT (Eighth Chamber),

composed of F. Biltgen (Rapporteur), Judge, acting as President of the Eighth Chamber, L.S. Rossi and N. Wahl, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Promexor Trade SRL, by R. Chiriș, avocat,
- the Romanian Government, by E. Gane, A. Rotăreanu and A. Wellman, acting as Agents,
- the European Commission, by A. Armenia and L. Lozano Palacios, acting as Agents,

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

gives the following

### Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1, 167 to 169, 176 to 180, 214(1), 250, 272 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('the VAT Directive'), and the principles of fiscal

neutrality, effectiveness, sincere cooperation, legal certainty, the protection of legitimate expectations and proportionality.

2 The request has been made in proceedings between Promexor Trade SRL ('Promexor') and the Direc?ia General? a Finan?elor Publice Cluj – Administra?ia Jude?ean? a Finan?elor Publice Bihor (Regional Directorate-General of Public Finances, Cluj, Romania – Regional Public Finance Administration, Bihor, Romania) ('the public finance administration') regarding the obligation imposed on Promexor, which was refused the right to deduct input value added tax (VAT) due to the revocation of its identification for VAT purposes, to pay VAT on its taxed transactions.

## **Legal context**

### ***European Union law***

3 Article 167 of the VAT Directive states:

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

4 Article 168 of that 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;
- (b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;
- (c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);
- (d) the VAT due on transactions treated as intra-Community acquisitions in accordance with Articles 21 and 22;
- (e) the VAT due or paid in respect of the importation of goods into that Member State.'

5 Article 178 of that directive provides:

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

- (a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI;
- (b) for the purposes of deductions pursuant to Article 168(b), in respect of transactions treated as the supply of goods or services, he must comply with the formalities as laid down by each Member State;

(c) for the purposes of deductions pursuant to Article 168(c), in respect of the intra-Community acquisition of goods, he must set out in the VAT return provided for in Article 250 all the information needed for the amount of VAT due on his intra-Community acquisitions of goods to be calculated and he must hold an invoice drawn up in accordance with Sections 3 to 5 of Chapter 3 of Title XI;

(d) for the purposes of deductions pursuant to Article 168(d), in respect of transactions treated as intra-Community acquisitions of goods, he must complete the formalities as laid down by each Member State;

(e) for the purposes of deductions pursuant to Article 168(e), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer, and stating the amount of VAT due or enabling that amount to be calculated;

(f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State.'

6 According to 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.'

7 Article 180 of that directive provides:

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

8 The first subparagraph of Article 213(1) of that directive provides as follows:

'Every taxable person shall state when his activity as a taxable person commences, changes or ceases.'

9 Under the first paragraph of Article 214 of that directive:

'Member States shall take the measures necessary to ensure that the following persons are identified by means of an individual number:

(a) every taxable person, with the exception of those referred to in Article 9(2), who within their respective territory carries out supplies of goods or services in respect of which VAT is deductible, other than supplies of goods or services in respect of which VAT is payable solely by the customer or the person for whom the goods or services are intended, in accordance with Articles 194 to 197 and Article 199;

(b) every taxable person, or non-taxable legal person, who makes intra-Community acquisitions of goods subject to VAT pursuant to Article 2(1)(b) and every taxable person, or non-taxable legal person, who exercises the option under Article 3(3) of making their intra-Community acquisitions subject to VAT;

(c) every taxable person who, within their respective territory, makes intra-Community acquisitions of goods for the purposes of transactions which relate to the activities referred to in the second subparagraph of Article 9(1) and which are carried out outside that territory;

(d) every taxable person who within their respective territory receives services for which he is liable to pay VAT pursuant to Article 196;

(e) every taxable person, established within their respective territory, who supplies services within the territory of another Member State for which VAT is payable solely by the recipient pursuant to Article 196.'

10 The first paragraph of Article 250 of the VAT Directive provides as follows:

'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.'

11 Under Article 273 of that directive:

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

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

## **Romanian law**

### *The previous Tax Code*

12 Article 153(9) and (9a) of Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Tax Code) of 22 December 2003 (*Monitorul Oficial al României*, Part I, No 927 of 23 December 2003), as amended ('the previous Tax Code'), provided:

'9. The competent tax authorities shall revoke the identification of a person for VAT purposes in accordance with the present article:

...

(e) if, in the VAT returns filed for six consecutive months in the course of a calendar half-year, in the case of persons whose tax period is a calendar month, and for two consecutive quarters in the course of a calendar half-year, in the case of taxable persons whose tax period is a calendar quarter, no acquisitions of goods/services or supplies of goods/services made in the course of those reference periods have been indicated, as from the first day of the second month following the current calendar half-year. From the date of the return relating to July 2012, in the case of taxable persons whose tax period is a calendar month, or the return relating to the third quarter of 2012, in the case of taxable persons whose tax period is a calendar quarter, the competent tax authorities shall revoke the identification for VAT purposes of a person if, in the VAT returns filed for six consecutive months, in the case of taxable persons whose tax period is a calendar month, and for two consecutive calendar quarters, in the case of taxable persons whose tax period is a calendar quarter, no acquisitions of goods/services or supplies of goods/services made in the course of those reference periods have been indicated, as from the first day of the month following that in which the time limit for filing the sixth return expired, in the first case, and as from the first day of the month following that in which the time limit for filing the second return expired, in the

second case;

...

9a. The procedure for revoking identification for VAT purposes shall be defined by the procedural rules in force. Following the revocation of identification for VAT purposes issued in accordance with paragraph 9(a) to (e) and (h), the competent tax authorities shall identify taxable persons subject to VAT by applying paragraph 7a as follows:

...

(d) at the request of the taxable person, in the situation referred to in paragraph 9(e), on the basis of a sworn statement that he or she will carry on economic activities. The taxable person's VAT identification date shall be the date of notification of the VAT identification decision.

Taxable persons in the situations referred to in this paragraph may not apply the provisions concerning the exemption threshold for small undertakings in Article 152 until the VAT identification date and shall apply the provisions of Article 11(1a) and (1c).'

13 Article 11(1c) of the previous Tax Code provided:

'Taxable persons established in Romania, whose identification for VAT purposes has been revoked in accordance with Article 153(9)(b) to (e) and (h) shall not, for the period in question, enjoy the right to deduct VAT on acquisitions, but shall be liable to pay VAT collected, in accordance with the provisions of Title VI, in respect of taxable transactions carried out during that period. As regards acquisitions of goods and/or services made during the period in which the relevant person has no valid VAT number, which are intended for transactions to be made after the VAT identification date and which give rise to the right of deduction under Title VI, adjustments shall be made in favour of the taxable person, by means of inclusion in the first tax return provided for in Article 156b submitted by the taxable person following the identification for VAT purposes or, as the case may be, in a subsequent return, in respect of tax relating to the following:

- (a) goods stored and services not used at the time of the identification, as certified on the basis of an inventory;
- (b) tangible fixed assets, including capital assets for which the adjustment period for the deduction has not expired, and tangible fixed assets in the process of implementation, as certified on the basis of inventory, which are owned by the relevant party at the time of identification. In the case of fixed tangible assets other than capital assets, the tax relating to as yet undepreciated values at the time of identification shall be adjusted. Article 149 applies in relation to capital assets.'

14 Article 145 of the previous Tax Code provided:

- 1. A right of deduction shall arise at the time the deductible tax becomes chargeable.
- 2. Every taxable person has the right to deduct tax on acquisitions where they are intended for the following transactions:
  - (a) taxed transactions;
  - (b) transactions resulting from economic activities for which the place of delivery/supply is deemed to be abroad, provided the tax would be deductible if the transaction were carried out in Romania;

- (c) transactions which are exempt in accordance with Articles 143, 144 and 144a;
- (d) transactions which are exempt in accordance with Article 141(2)(a), points 1 to 5, and 141(2)(b), where the customer is established outside the Community or where those transactions relate directly to goods to be exported out of the Community and, in respect of transactions carried out by intermediaries acting in the name and on behalf of another person, when they take part in the conduct of such transactions;
- (e) transactions referred to in Article 128(7) and Article 129(7), if the tax applied to that transfer.

...

4. Under the conditions set out in the detailed rules for implementation, the right to deduct tax shall be granted in respect of acquisitions by a taxable person before his or her identification for VAT purposes, in accordance with Article 153.'

#### *The new Tax Code*

15 Article 11(8) of Legea nr. 227/2015 privind Codul fiscal (Law No 227/2015 establishing the Tax Code) of 8 September 2015 (*Monitorul Oficial al României*, Part I, No 688 of 10 September 2015; 'the new Tax Code') provides as follows:

'Taxable persons established in Romania, whose identification for VAT purposes has been revoked in accordance with Article 316(11)(c) to (e) and (h) shall not, for the period in question, enjoy the right to deduct VAT on acquisitions, but shall be liable to pay VAT collected, in accordance with the provisions of Title VII, in respect of taxed transactions carried out during that period. In the case of identification for VAT purposes in accordance with Article 316(12), the taxable person shall exercise the right of deduction in respect of acquisitions of goods and/or services made during the period in which his or her VAT identification number was revoked, by means of inclusion in the first VAT return provided for in Article 323 and filed after identification for VAT purposes or, as the case may be, in a subsequent return, even if the invoice does not contain the VAT identification number of the taxable person. After being identified for VAT purposes in accordance with Article 316(12) in respect of supplies of goods/services made during the period in which his or her VAT identification number was revoked, the taxable persons shall issue invoices showing separately the [VAT] collected during that period, which is not included in the VAT return filed in accordance with Article 323.'

16 Under Article 316(12) and (14) of the new Tax Code:

'12. The procedure for revoking identification for VAT purposes shall be defined by the procedural rules in force. Following revocation of the identification for VAT purposes issued in accordance with paragraph 11(a) to (e) and (h), the competent tax authorities shall identify the taxable person subject to VAT, at his or her request, as follows:

...

(d) in the situation referred to in paragraph 11(e), on the basis of a sworn statement that he or she will carry on economic activities. The taxable person's VAT identification date shall be the date of notification of the VAT identification decision;

...

14. Taxable persons who are in the situations referred to in paragraph 12 may not apply the

provisions concerning the exemption threshold for small undertakings provided for in Article 310 until the VAT identification date and shall apply the provisions of Article 11(6) and (8).'

17 Article 297 of the new Tax Code provides as follows:

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

...

4. Every taxable person has the right to deduct tax on acquisitions where they are intended for the following transactions:

(a) taxed transactions;

(b) transactions resulting from economic activities for which the place of delivery/supply is deemed to be abroad, provided the tax would be deductible if the transaction were carried out in Romania;

(c) transactions which are exempt in accordance with Articles 294, 295 and 296;

(d) transactions which are exempt in accordance with Article 292(2)(a), points 1 to 5, and 292(2)(b), where the customer is established outside the European Union or where those transactions relate directly to goods to be exported out of the European Union and in respect of transactions carried out by intermediaries acting in the name and on behalf of another person, when they take part in the conduct of such transactions;

...

6. Under the conditions set out in the detailed rules for implementation, the right to deduct tax shall be granted in respect of acquisitions by a taxable person before his or her identification for VAT purposes, in accordance with Article 316.'

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

18 By decision of 30 April 2014, Promexor's identification for VAT purposes was revoked automatically on the basis that for six consecutive months its VAT returns did not mention any transactions subject to VAT. Although it no longer had a valid identification number, Promexor continued to issue invoices exclusive of VAT as from May 2014.

19 In April 2019, the public finance administration issued Promexor with a tax inspection notice covering the period from 1 April 2014 to 31 December 2017. In order to avoid payment of a fine for failure to submit tax returns within the prescribed periods, Promexor retrospectively filed returns relating to the VAT owed by taxable persons whose VAT identification number had been revoked in accordance with Article 153(10) of the previous Tax Code.

20 On the basis of those declarations and without carrying out additional checks, the public finance administration, on 19 April 2019, issued a writ of execution on the basis of which it initiated enforcement proceedings on that same date, 19 April 2019, against Promexor with order for payment of VAT.

21 Following the tax inspection of 11 June 2019, the public finance administration took the view that Promexor had indeed filed VAT returns for the period in question. On 31 July 2019, namely after the tax inspection report was issued but before the limitation period for the right of deduction had expired, Promexor submitted amended returns indicating that it owed no VAT.

22 By application of 28 May 2019, Promexor brought an action before the Judec?toria Oradea (Court of First Instance, Oradea, Romania) seeking, inter alia, annulment of the writ of execution and of the order for payment of 19 April 2019.

23 In support of its application, Promexor claims that, although mechanisms exist to remedy the consequences of revocation of a VAT identification number, namely that a taxable person can, after re-registering for tax purposes, deduct VAT retroactively for the entire period during which he or she did not have a VAT identification number, in practice those mechanisms remained inaccessible. In such circumstances, a taxable person whose identification for VAT purposes has been revoked and who, for formal reasons, cannot re-register for VAT purposes has no remedy. Furthermore, sustaining an obligation imposed on a legal person whose VAT identification number has been revoked to pay the VAT collected for an indefinite period is contrary to the principles laid down in the Court's case-law.

24 The public finance administration, for its part, takes the view that the enforcement proceedings are well founded and lawful. It contends that the VAT returns of taxable persons whose VAT identification number have been revoked, such as those filed by Promexor, have the same legal status as sworn statements, in accordance with the legislation in force. As regards the amended tax returns, the public finance administration observed that they had been filed after the tax inspection report was issued, and therefore, according to the law, no amendment could be made.

25 The referring court notes, first, that, under the national legislation, a taxable person whose identification for VAT purposes has been revoked does not have the right to deduct VAT relating to acquisitions, but remains subject to the obligation to pay the VAT which has been collected. Next, it states that the national legislation in force does not lay down any time limit as regards the obligation on that taxable person to collect VAT. Finally, it adds that it is true that the right to deduct VAT can be exercised retroactively after re-registering for VAT purposes. However, in the present case, Promexor is deprived of that opportunity because it does not satisfy all of the formal requirements, since its director is a shareholder of a company in insolvency proceedings.

26 In those circumstances the Judec?toria Oradea (Court of First Instance, Oradea) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Do the provisions of [the VAT Directive] and the principle of fiscal neutrality preclude national legislation by which a Member State requires a citizen to collect and pay VAT to the State for an indefinite period without, however, at the same time granting him [or her] the right to deduct VAT on the ground that the VAT code had been automatically revoked since no transactions subject to VAT had been indicated in the VAT returns filed for six consecutive months/two consecutive calendar quarters?

(2) With regard to the circumstances of the main proceedings, are the principle of legal certainty, the principle of legitimate expectations, the principle of proportionality and [the principle] of sincere cooperation, as set out in [the VAT Directive], compatible with national legislation or with a practice of the tax authority according to which, although the Member State normally allows a legal person, on request, to re-register for VAT purposes following automatic revocation of the



VAT code, in certain specific circumstances a taxpayer may not request re-registration for VAT purposes, for purely formal reasons, whilst being obliged to collect and pay VAT to the State, for an indeterminate period, without, however, at the same time being granted the right to deduct VAT?

(3) With regard to the circumstances of the main proceedings, are the principle of legal certainty, the principle of legitimate expectations, the principle of proportionality and [the principle] of sincere cooperation, as set out in [the VAT Directive], to be interpreted as prohibiting the imposition on a taxpayer of a requirement to collect and pay VAT for an indefinite period and without granting the right to deduct VAT, without, in the particular case, the tax authority in question verifying the substantive requirements relating to the right to deduct VAT and without there being any fraud on the part of the taxpayer?’

### **Admissibility of the request for a preliminary ruling**

27 The Romanian government disputes the referring court’s description of the legal and factual framework and argues that, if Promexor had submitted an application for a new VAT identification number, then the public finance administration would have assigned one to it. Accordingly, the Romanian Government takes the view that the questions referred for a preliminary ruling should be declared inadmissible.

28 It must be borne in mind that, according to the Court’s settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 4 June 2020, *Kancelaria Medius*, C-495/19, EU:C:2020:431, paragraph 21 and the case-law cited).

29 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual and legal material necessary to give a useful answer to the questions submitted to it (judgment of 4 June 2020, *Kancelaria Medius*, C-495/19, EU:C:2020:431, paragraph 22 and the case-law cited).

30 In the present case, it is not obvious from the file before the Court that the situation in the main proceedings corresponds to one of the cases referred to in the preceding paragraph of the present judgment. In particular, although the national court did not expressly mention the national provision which prevented Promexor from re-registering for VAT purposes, it nevertheless referred to the existence of such a provision. At any rate, it is not disputed that such a provision exists and appears in Ordinul președintelui ANAF nr. 2856/2017 (order of the president of the national agency for fiscal administration No 2856/2017). It is not for the Court to call into question the interpretation of national law provided by the referring court.

31 The reference for a preliminary ruling is therefore admissible.

### **Consideration of the questions referred**

32 By its questions referred for a preliminary ruling, which it is appropriate to examine together, the referring court asks, in essence, whether Article 168, Article 213(1), Article 214(1) and Article 273 of the VAT Directive and the principle of VAT neutrality, read in the light of the principles of legal certainty, the protection of legitimate expectations and proportionality, must be interpreted as precluding national legislation under which a tax authority which has revoked the VAT identification of a taxable person who has submitted VAT returns for six consecutive months in which no taxable transactions are indicated, may require that taxable person, when he or she continues his or her activities after the identification for VAT purposes has been revoked, to collect VAT without being able to re-register for VAT purposes and to benefit from the right to deduct input VAT.

33 In answering that question, it must be borne in mind that, in accordance with the settled case-law of the Court, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation. The right of deduction provided for in Article 167 et seq. of the VAT Directive is an integral part of the VAT scheme and may not, in principle, be limited. In particular, that right is exercisable immediately in respect of all the taxes charged on transactions relating to inputs. The deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his or her economic activities. The common system of VAT consequently ensures the neutrality of taxation of all economic activities, whatever the purpose or results of those activities, provided that they are themselves subject in principle to VAT (see, to that effect, judgment of 7 March 2018, *Dobre*, C-159/17, EU:C:2018:161, paragraphs 28 to 30 and the case-law cited).

34 Furthermore, the fundamental principle of VAT neutrality requires 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 (judgment of 7 March 2018, *Dobre*, C-159/17, EU:C:2018:161, paragraph 31 and the case-law cited). Therefore, although refusal of the right of deduction may be justified where non-compliance with formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been satisfied (see, to that effect, judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 46 and the case-law cited), such a refusal cannot be made where the competent administration has all the information necessary to establish that those substantive requirements have been satisfied (see, to that effect, judgment of 11 December 2014, *Idexx Laboratories Italia*, C-590/13, EU:C:2014:2429, paragraphs 44 and 45).

35 The Court also held that, in particular, identification for VAT purposes, provided for in Article 214 of the VAT Directive, and the obligation of the taxable person to state when his or her activity as a taxable person commences, changes or ceases, provided for in Article 213 of that directive, are only formal requirements for the purposes of control, and they cannot compromise, inter alia, the right to deduct VAT, in so far as the substantive conditions which give rise to that right have been satisfied (judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 60 and the case-law cited).

36 The Court concluded that a person taxable for VAT purposes may not be prevented from exercising his or her right of deduction on the ground that he or she had not been identified as a taxable person for those purposes before using the goods purchased in the context of his or her taxed activity (judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 61 and the case-law cited).

37 In particular, in a case concerning the same national legislation as that at issue in the main proceedings, the Court held that Articles 167 to 169, 179, 213(1), 214(1) and Article 273 of the VAT Directive must be interpreted as not precluding national legislation which allows tax

authorities to refuse a taxable person the right to deduct VAT when it is established that, on account of the alleged infringements committed by that person, the tax authorities could not have access to the information necessary to establish that the substantive requirements giving rise to the right to deduct input VAT paid by that taxable person have been satisfied or that that person acted fraudulently in order to enjoy that right (see, to that effect, judgment of 7 March 2018, *Dobre*, C?159/17, EU:C:2018:161, paragraph 42).

38 In the present case, first, the referring court found that there was no VAT evasion in the case in the main proceedings. If that finding that there was no tax evasion were to be confirmed, which is for the national court to determine, the right to deduct input VAT cannot, for that reason, be refused to Promexor.

39 In the context of that determination, it is for the national court to take account of the fact that, even if infringements of those formal obligations do not prevent the production of conclusive evidence that the substantive requirements giving rise to the right to deduct input VAT have been satisfied, such circumstances may establish the simplest case of tax evasion, in which the taxable person deliberately fails to fulfil the formal obligations incumbent upon him or her with the aim of evading payment of the tax (see, to that effect, judgment of 28 July 2016, *Astone*, C?332/15, EU:C:2016:614, paragraph 55).

40 Second, the referring court states that, although it was deprived of the right to deduct input VAT, due to the fact that the public finance administration did not ascertain whether the substantive conditions for claiming that deduction were satisfied, Promexor was still required to pay the VAT due on its taxed transactions and was unable, for purely formal reasons, to re-register for VAT purposes.

41 In that regard, it must be noted that, although it follows from the wording of Articles 213 and 214 of the VAT Directive that Member States have a certain discretion when they adopt measures to ensure the identification of taxable persons for the purposes of VAT, that discretion cannot be unrestricted, so that a Member State cannot refuse to assign an individual number to a taxable person without legitimate grounds (see, to that effect, judgment of 14 March 2013, *Ablessio*, C?527/11, EU:C:2013:168, paragraphs 22 and 23). In particular, although Member States have a legitimate interest in taking appropriate steps to protect their financial interests and that the prevention of tax evasion, avoidance and abuse, and although they can legitimately take measures, in accordance with the first paragraph of Article 273 of the VAT Directive, that are necessary to prevent the misuse of identification numbers, in particular by undertakings whose activity, and consequently their status as taxable persons, is purely fictitious, those measures must not go beyond what is necessary for the correct collection of the tax and the prevention of evasion, and they must not systematically undermine the right to deduct VAT, and hence the neutrality of that tax (see, to that effect, judgment of 14 March 2013, *Ablessio*, C?527/11, EU:C:2013:168, paragraphs 28 and 30).

42 When a tax authority, on the basis of national legislation, makes the right to deduct VAT subject to compliance with formal obligations, such as the identification for VAT purposes, without taking into account substantive requirements and, in particular, as is the case here and as the referring court points out, without examining whether those requirements are satisfied, that tax authority goes further than is necessary to ensure the correct collection of the tax (see, to that effect, judgment of 27 September 2012, *VSTR*, C?587/10, EU:C:2012:592, paragraph 45 and the case-law cited). The same conclusion must be reached, in the light of the case-law referred to in paragraph 41 above, where a tax authority, acting in accordance with national legislation, systematically decides not to assign a VAT identification number to a taxable person solely because its director is a partner in another company which is subject to insolvency proceedings,

without, however, examining whether there is a risk to the correct collection of VAT or a risk of evasion.

43 However, it is ultimately for the referring court to assess the compatibility of the national legislation and its application by the public finance administration with the requirements referred to in paragraphs 41 and 42 of the present judgment, having regard to all the circumstances of the case in the main proceedings.

44 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 168, Article 213(1), Article 214(1) and Article 273 of the VAT Directive and the principle of VAT neutrality, read in the light of the principles of legal certainty, the protection of legitimate expectations and proportionality, must be interpreted as not precluding, where the identification of a taxable person for VAT purposes has been revoked because no taxable transactions have been indicated in the VAT returns filed for six consecutive months but where that taxable person continues his or her activities notwithstanding that revocation, national legislation under which the competent tax authority may require that taxable person to pay the VAT due on his or her taxed transactions, provided that he or she can re-register for VAT purposes and deduct the input VAT paid. The fact that the director of the taxable person is a partner in another company which is the subject to insolvency proceedings cannot, as such, be put forward to systematically refuse the re-registration of that taxable person for VAT purposes.

### **Costs**

45 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the referring 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 (Eighth Chamber) hereby rules:

**Article 168, Article 213(1), Article 214(1) and Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010 and the principle of value added tax (VAT) neutrality, read in the light of the principles of legal certainty, the protection of legitimate expectations and proportionality, must be interpreted as not precluding, where the identification of a taxable person for VAT purposes has been revoked because no taxable transactions have been indicated in the VAT returns filed for six consecutive months but where that taxable person continues his or her activities notwithstanding that revocation, national legislation under which the competent tax authority may require that taxable person to pay the VAT due on his or her taxed transactions, provided that he or she can re-register for VAT purposes and deduct the input VAT paid. The fact that the director of the taxable person is a partner in another company which is the subject to insolvency proceedings cannot, in itself, be put forward to systematically refuse the re-registration of that taxable person for VAT purposes.**

[Signatures]

\* Language of the case: Romanian.