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Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

29 September 2022 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 203 – Sale-and-lease back agreement – Persons liable for payment of VAT – Possibility of treating a written contractual agreement as an invoice)

In Case C-235/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vrhovno sodišče (Supreme Court, Slovenia), made by decision of 17 March 2021, received at the Court on 12 April 2021, in the proceedings

Raiffeisen Leasing, trgovina in leasing d.o.o.

v

Republika Slovenija,

THE COURT (Seventh Chamber),

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

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Raiffeisen Leasing, trgovina in leasing d.o.o., by A. Cankar, ovetnik,
- the Republika Slovenija, by A. Vran, acting as Agent,
- the European Commission, by A. Armenia, U. Babovič and A. Kraner, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 May 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 203 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 This request has been made in the context of proceedings between Raiffeisen Leasing,

trgovina in leasing d.o.o. ('Raiffeisen Leasing'), and the Republika Slovenija (Republic of Slovenia), represented by the Ministrstvo za finance (Ministry of Finance, Slovenia), concerning the imposition of value added tax (VAT).

Legal context

European Union law

3 Title IV of Directive 2006/112, entitled 'Taxable transactions', includes Chapter 1, entitled 'Supply of goods'.

4 Article 14 of that directive, which appears in Chapter 1, provides:

'1. "Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.

2. In addition to the transaction referred to in paragraph 1, each of the following shall be regarded as a supply of goods:

...

(b) the actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment;

...'

5 Title XI, entitled 'Obligations of taxable persons and certain non-taxable persons', includes a Chapter 1, entitled 'Obligation to pay', Section 1 of which is entitled 'Persons liable for payment of VAT to the tax authorities'.

6 Article 203 of that directive, which appears in Section 1, provides:

'VAT shall be payable by any person who enters the VAT on an invoice.'

7 Chapter 3, entitled 'Invoicing', which forms part of Title XI of Directive 2006/112, includes Section 2, entitled 'Concept of invoice', comprising Articles 218 and 219; Section 3, entitled 'Issue of invoices', comprising Articles 220 to 225, and Section 4, entitled 'Content of invoices', comprising Articles 226 to 231.

8 Article 218 of that directive provides:

'For the purposes of this Directive, Member States shall accept documents or messages on paper or in electronic form as invoices if they meet the conditions laid down in this Chapter.'

9 Article 219 of the directive reads as follows:

'Any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice.'

10 Article 220 of that directive provides:

'Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party:

(1) supplies of goods or services which he has made to another taxable person or to a non-taxable legal person;

...'

11 Article 226 of Directive 2006/112 is worded as follows:

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

...

(9) the VAT rate applied;

(10) the VAT amount payable, except where a special arrangement is applied under which, in accordance with this Directive, such a detail is excluded;

...'

12 Article 227 of that directive provides:

'Member States may require taxable persons established in their territory and supplying goods or services there to indicate the VAT identification number, referred to in Article 214, of the customer in cases other than those referred to in point (4) of Article 226.'

13 Article 229 of the directive reads as follows:

'Member States shall not require invoices to be signed.'

Slovenian law

14 According to Article 67 of the zakon o davku na dodano vrednost – ZDDV-1 (Law on value added tax) (Uradni list RS, No 117/06 of 16 November 2006), in the version applicable to the dispute in the main proceedings:

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

(a) for the purposes of deductions pursuant to Article 63(1)(a), of this Law in respect of the supply of goods or services, the taxable person must hold an invoice drawn up in accordance with Articles 80(a) to 84(a) of this Law;

...'

15 Article 76 of that law provides:

'1. VAT must be paid by:

...

(9) any person who enters the VAT on an invoice.'

16 Article 81(8) of that law provides:

'For the purposes of this law, all documents on paper or in electronic form which satisfy the requirements of Articles 80(a) to 84(a) of this Law shall be regarded as invoices.'

17 Article 82 of that law lists the information which the taxable person must indicate in the invoice, while Article 83 of that law lists the details which the taxable person must indicate in the simplified invoice.

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

18 RED d.o.o. was the owner of land and a residential building in Rožna dolina, in the municipality of Ljubljana (Slovenia). That company wished to erect new buildings there. On 19 November 2007, RED concluded with Raiffeisen Leasing a contractual sale-and-lease back agreement. Under the terms of that contractual agreement, Raiffeisen Leasing was required to buy the land at a price and RED was required to pay Raiffeisen Leasing the monthly lease instalments until the value of the land and the buildings to be constructed were repaid in full, namely a sum of EUR 1 294 786.56 ('the contractual sale-and-lease back agreement'). The VAT amount of EUR 110 056.86 was included in that agreement.

19 Raiffeisen Leasing did not issue an invoice to RED on the basis of the contractual sale-and-lease back agreement, nor did it charge or pay the VAT. RED exercised its right to deduct VAT on the basis of the contractual sale-and-lease back agreement, contending that that agreement constituted an invoice.

20 On 22 November 2007, the parties to the contractual sale-and-lease back agreement concluded a contract for the sale of land ('the contract for sale'), in which a sale price including VAT was fixed. RED issued Raiffeisen Leasing with an invoice in which the VAT was taken into account.

21 In November 2007, Raiffeisen Leasing exercised the right to deduct VAT in respect of the contract of sale.

22 Since RED had not fulfilled its obligations under the contractual sale-and-lease back agreement within the prescribed period, the parties terminated that agreement on 21 October 2011. Raiffeisen Leasing subsequently sold the land to a third party at a price inclusive of VAT.

23 On 25 July 2014, RED was served with a decision from the Slovenian tax authority, which refused its application for a deduction of VAT in respect of the contractual sale-and-lease back agreement. That decision of the tax authority eliminated the risk of loss of tax revenue and, therefore, Raiffeisen Leasing acquired the right to reduce, by way of correction, the VAT due. However, the tax authority established that that company had not paid the VAT due for the period from 3 January 2008 to 25 July 2014. Accordingly, that authority ordered Raiffeisen Leasing to pay interest on the tax debt amounting to EUR 50 571.88.

24 As regards the transaction covered by the contract for sale, the tax authority established that that transaction was exempt from VAT.

25 However, since the tax declaration under which a person may choose to render a transaction subject to VAT was not submitted by the parties to the contract for sale, the tax authority took the view that no right to deduct could be claimed even though an invoice had been issued which stated an amount of VAT which was not due.

26 As a result, Raiffeisen Leasing was required to pay additional VAT amounting to EUR 44 200, plus interest amounting to EUR 11 841.97.

27 In the tax authority's opinion, the fact that the land was subsequently sold by Raiffeisen Leasing was irrelevant, since that sale was subject to VAT.

28 After having exhausted the administrative remedies, Raiffeisen Leasing brought an action before the Upravno sodišče (Administrative Court, Slovenia), which dismissed its action. It therefore lodged an appeal on a point of law before the referring court, the Vrhovno sodišče (Supreme Court, Slovenia).

29 The referring court recalls that, as is apparent from the case-law of the Court, the obligation to pay VAT as a result of the issue of a VAT invoice could arise even if the invoice does not contain certain information the mention of which is required by Directive 2006/112, in particular in the event that the place of supply of the service provided is not indicated (see, to that effect, judgment of 18 June 2009, *Stadeco*, C-566/07, EU:C:2009:380, paragraphs 26 and 27).

30 However, the referring court takes the view that a contractual agreement, as an instrument covered by the law of obligations, may be distinguished from an invoice and may constitute only the legal basis of the transaction which is subject to VAT, the invoice having to be drawn up when the chargeable event giving rise to the obligation to pay VAT occurs.

31 Therefore, the referring court seeks to ascertain whether a contractual agreement can be regarded as an invoice, within the meaning of Article 203 of Directive 2006/112, solely where it objectively demonstrates the parties' clearly expressed intention to treat it as an invoice for a specific transaction, such an agreement thus being capable of giving rise to a reasonable expectation on the part of the purchaser that it may, on the basis thereof, deduct input VAT.

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

'(1) May a written contractual agreement be regarded as an invoice, for the purposes of Article 203 of Directive [2006/112], only if it contains all of the information that is required to be set out in an invoice in accordance with Chapter 3 ("Invoicing") [of Title XI] of [that directive]?

In the event that that question is answered in the negative,

(2) On the basis of what information and circumstances may a written contractual agreement in any event be regarded (also) as an invoice giving rise to an obligation to pay VAT within the meaning of Article 203 of Directive [2006/112]?

More specifically,

(3) May a written contractual agreement, concluded by two taxable persons subject to VAT and concerning the supply of goods or services, be regarded as an invoice within the meaning of Article 203 of Directive [2006/112] if it evidences an express and objectively identifiable intention on the part of the seller or the provider of services, as a contracting party, to issue an invoice for a specific transaction, such that the purchaser could reasonably assume that it had, on the basis thereof, a right to deduct the input VAT paid?'

Consideration of the questions referred

33 By its questions, which must be considered together, the referring court asks, in essence,

whether Article 203 of Directive 2006/112 must be interpreted as meaning that a contractual sale-and-lease back agreement, the conclusion of which was not followed by the issue of an invoice by the parties, may be regarded as an invoice, within the meaning of that provision, and, if so, what details that contractual agreement must contain in order to be regarded as such an invoice.

34 In addition, the referring court seeks to ascertain, in essence, whether it is relevant, in that regard, to examine whether that contractual agreement objectively demonstrates an intention on the part of the seller or supplier of services that it, as is the case for an invoice, is capable of giving rise to an expectation on the part of the purchaser that it will be able, on the basis of that agreement, to deduct input VAT.

35 In that regard, the Court has held, first, that the VAT indicated on an invoice is payable by the issuer of the invoice even in the absence of any actual taxable transaction (judgment of 18 March 2021, *P (Fuel cards)*, C-48/20, EU:C:2021:215, paragraph 26 and the case-law cited).

36 Article 203 of Directive 2006/112 is intended to eliminate the risk of loss of tax revenue which the right of deduction provided for by that directive might entail (judgment of 18 March 2021, *P (Fuel cards)*, C-48/20, EU:C:2021:215, paragraph 27 and the case-law cited).

37 As regards Article 226 of Directive 2006/112, the objective of the details which must be shown in an invoice is to allow the tax authorities to monitor payment of the tax due and, if appropriate, the existence of the right to deduct VAT (judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 27).

38 Second, the fundamental principle of the neutrality of VAT requires deduction of input VAT to be allowed if the substantive requirements are satisfied, even if the taxable persons have failed to comply with some formal conditions. Consequently, where the tax authorities have the information necessary to establish that the substantive requirements have been satisfied, they cannot, in relation to the right of the taxable person to deduct that tax, impose additional conditions which may have the effect of rendering that right ineffective for practical purposes (judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 42 and the case-law cited).

39 Therefore, the Court held that the tax authorities cannot refuse the right to deduct VAT on the sole ground that an invoice does not satisfy the conditions required by Article 226(6) and (7) of Directive 2006/112 if they have available all the information to ascertain whether the substantive conditions for that right are satisfied (judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 43).

40 It is true that the relationship between, on the one hand, the existence and the regularity of an invoice and, on the other, the right to deduct VAT is not automatic, in the sense that, first, that right is, in principle, linked to the actual performance of the supply of goods or services in question and, second, the exercise of the right to deduct does not extend to a tax which is due solely because it is mentioned on an invoice (see, to that effect, order of 4 July 2013, *Menidzherski biznes reshenia*, C-572/11, not published, EU:C:2013:456, paragraphs 19 and 20).

41 However, since, as is clear from the case-law referred to in paragraph 36 of the present judgment and as the Advocate General observed, in essence, in points 41 and 45 of his Opinion, the objective of Article 203 of Directive 2006/112 is to eliminate the risk of loss of tax revenue, that risk may be avoided where the tax authorities have the information necessary to establish whether the substantive requirements for the right to deduct VAT have been met, irrespective of whether the VAT has been indicated in a document entitled 'invoice' or in another document, such as a contractual agreement concluded by the parties.

42 Therefore, in order to be recognised as an invoice within the meaning of Article 203 of that directive, a document must, first, indicate the VAT and, second, contain the information referred to in the provisions of Chapter 3, Section 4, of Title XI of that directive, entitled 'Content of invoices', which is necessary for the tax authorities to be able to establish whether the substantive conditions for the right to deduct VAT are satisfied.

43 It is not relevant, in that regard, to examine whether, assuming that the document in question is a contractual agreement, it objectively demonstrates the intention of the parties to that agreement that it constitutes an invoice which is capable of giving rise to an expectation on the part of a co-contractor that it will, on the basis of that agreement, be able to deduct input VAT.

44 It is for the referring court to assess, in the context of all the relevant circumstances at issue in the main proceedings and, in particular, of all the provisions of the contractual sale-and-lease back agreement, whether that agreement actually contains the information necessary in the present case for the tax authority to be able to establish whether the substantive conditions for the right to deduct input VAT are satisfied.

45 As regards the fact that, in the main proceedings, the contractual sale-and-lease back agreement indicated the amount of VAT but not the VAT rate, it is for the referring court to ascertain whether that rate could nevertheless have been deduced from that agreement.

46 In the light of all the foregoing considerations, the answer to the questions referred is that Article 203 of Directive 2006/112 must be interpreted as meaning that a contractual sale-and-lease back agreement, the conclusion of which was not followed by the issue of an invoice by the parties, may be regarded as an invoice, within the meaning of that provision, where that contractual agreement contains all the information necessary for the tax authorities of a Member State to be able to establish whether the substantive conditions for the right to deduct VAT are satisfied in the case, which is for the referring court to ascertain.

Costs

47 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 (Seventh Chamber) hereby rules:

Article 203 of Council Directive 2006/112/EC of 28 November 2006, on the common system of value added tax,

must be interpreted as meaning that a contractual sale-and-lease back agreement, the conclusion of which was not followed by the issue of an invoice by the parties, may be regarded as an invoice, within the meaning of that provision, where that contractual agreement contains all the information necessary for the tax authorities of a Member State to be able to establish whether the substantive conditions for the right to deduct value

added tax are satisfied in the case, which is for the referring court to ascertain.

[Signatures]

* Language of the case: Slovenian.