Formal invoicing mistakes and the impact on VAT

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Abstract— Pursuant to the provisions of Section 71 of Act no. 222/2004 Coll. on value-added tax, as amended (hereinafter referred to as the "VAT Act"), an invoice is any document or notification that is made in paper or electronic form under the VAT Act in force in the domestic country or the law in force in another Member State governing the invoice.
The invoice is the basis necessary for the exercise of the right to deduct VAT. In the article, in connection with the conclusions of the case-law of the Court of Justice of the EU, we state what effect the fact that the invoice does not contain all the requisites has on the deduction of VAT.

Index Terms— VAT, tax control, invoicing, tax return, accounting, tax liability.

1 INTRODUCTION

Each invoice must reflect the actual supply of goods or services and must be linked to a specific taxable transaction, whether the supply of goods or services. The supplier of the goods or services shall claim by the invoice for the taxable transactions which he has made. For the recipient of goods or services, the invoice is a document that is necessary to prove the origin of the right to deduct tax from the received performance. The invoice must state the taxable transaction which took place and the invoice must contain all the required particulars.
The taxpayer is obliged to provide the tax office with invoices that have been prepared or have been prepared on his behalf by the customer or a third party and that he has received, regardless of whether they have been prepared in paper or electronic form.

2 CONTENT OF THE INVOICE

The VAT Act in the provision of § 74 stipulates the same content of invoices in case of delivery of goods or services with the place of delivery in the country of origin as with the place of delivery in another Member State or a third country if the supplier of goods or services is obliged to issue an invoice according to § 72 of the VAT Act.

The invoice must state the name of the taxable person or the taxable person, the address of his registered office, place of business, establishment, residence, or address of the place where he usually resides, and his tax identification number under which he supplied the goods or services. In the case of the identification of the recipient of the goods or services, the invoice must state the name and surname of the recipient of the goods or services or the name of the recipient of the goods or services, his registered office, place of business, establishment, residence or home address, and his tax identification number under which the goods were supplied to him or under which he was supplied with services. If the goods or services are supplied by a VAT group, as far as the identification of the supplier of the goods or services is concerned, the name and address are given in the invoice the registered office, place of business, or, where applicable, the establishment of the group member supplying the goods or services and the group tax identification number.

Other details of the invoice, such as the serial number of the invoice, which should be chronological in the case of issued invoices, the date when the goods or services were delivered or the date when payment was received, if this date can be determined and differs from the invoice date, the date of issue of the invoice, the quantity and type of goods supplied or the scope and type of service supplied, the unit price excluding tax and rebates and rebates, if not included in the unit price, the amount of total tax in euros to be paid or the new means of transport according to § 11 par. 12.

If the invoice is sent electronically, it is considered that the invoice is issued on the same day as it is sent to the customer.

In the case of the tax base, in § 74 par. 1 letter g) of the VAT Act stated that the tax base shall be stated for each tax rate. In the case of tax exemption, the invoice in accordance with § 74 par. 1 letter (h) of the VAT Act, make a reference to the provisions of that Act or Council Directive 2006/112 / EC on the common system of value-added tax (hereinafter referred to as the 'VAT Directive') or the verbal information 'supply is exempt'. If a special regulation according to § 65 or 66 of the VAT Act is applied, the amount of tax may not be stated in the invoice. **The invoice must contain verbal information stating that it is an invoice to the customer, or the transfer of tax liability, or adjustment of the taxation of the surcharge**. The verbal information in question is regulated by the VAT Act in § 74 par. 1 letter j), k), m) and n) of the VAT Act.

A foreign person represented by a tax representative in the domestic country pursuant to Section 69a or Section 69aa of the VAT Act must state in the invoice the name and surname or name of the tax representative, the address of his registered office or residence, and his special tax identification number.

If the goods or services are supplied with a place of supply in another Member State and the taxable person is the recipient of the goods or services, the invoice need not contain
- tax base for each tax rate / § 74 par. 1 letter g) /,
- unit price without tax and discount and rebate, if they are not included in the unit price / § 74 par. 1 letter g) /,
- the tax rate applied or the tax exemption; in the case of exemption, a reference to the provision of this Act or Council Directive 2006/112 / EC or the verbal information "supply is exempt from tax" / § 74 par. 1 letter h) /,
- the amount of total tax in euros to be paid / § 74 par. 1 letter i) /, if the taxable amount can be determined by reference to the quantity or extent and type of goods or services.

3 INVOICES AS EVIDENCE DURING TAX INSPECTION

From the point of view of VAT, the mere existence of an invoice is not relevant evidence that the goods have actually been delivered. The recording of tax documents (invoices) in accordance with the accounting principles does not yet constitute a condition for the possibility of exercising the right to deduct tax on received taxable supplies (goods and services). According to § 49 par. 2 letters a) of the VAT Act, the taxpayer may deduct from the tax he is obliged to pay only the tax applied to him by other taxpayers in the country on goods and services which are or are to be supplied to the taxpayer and which he uses for the purposes of his business as a taxpayer.

The legal conditions, after which the taxpayer acquires the right to deduct the tax, do not only consist in a formal declaration, in the submission of documents with the prescribed content, but these must be of a factual nature - i. they must indisputably prove the fact in all its features - in the legal fact, in the object, and the subject.

Taxable transactions declared by the taxpayer are assessed by the tax authorities in the Slovak Republic with the intentions of all evidence submitted by the tax subject and evidence obtained from the tax administrator's activities, while the tax authorities are obliged to proceed in accordance with what they shall evaluate this evidence individually and all the evidence in relation to each other, taking into consideration everything that has come to evidence in the tax proceedings.

In order to properly assess the declared taxable transactions - e.g. supply of goods, the taxable supply is then analyzed individually and in the light of the relevant objective circumstances, in order to examine whether the goods were transferred for economic consideration and to identify the nature of those supplies.

For the buyer to prove that a taxable transaction has actually taken place - the supply of goods, ie that tax liability has arisen for this product as a condition arising from the provisions of § 49 para. 1 of the VAT Act and at the same time that he used this taxable supply for the supply of goods and services as a payer as provided by § 49 par. 2 of the VAT Act, the tax administrator may request additional information depending on the circumstances of the specific case. For example, it may ask to explain the purpose of the purchase of the said goods, to present transport documents (transport invoices, transport contracts, records of motor vehicle operation), to state who arranged the transport, how and by whom the goods were transported, by what means of transport, and performed handling of the goods where the purchased goods were stored, submit lease agreements or ownership deeds to the storage premises and so on.

The result of the evidence may be the conclusion that the tax subject has not created real conditions for the implementation of real taxable transactions, or that it is a so-called A "carousel" of companies operated by one person. Alternatively, the supply of goods of fictitious value and fictitious quantity created the conditions under which the taxable person obtained an unjustified benefit by deducting excessive deductions from the State budget by deducting tax from invoices for the purchase of goods as a payer, pretending the economic nature of the business. In such cases, the procedure of the tax administrator is in accordance with the VAT Act and the Tax Code, when he does not grant the right to deduct the tax.

It follows from the above that a transaction does not constitute an economic activity if it does not meet the objective criteria on which that concept is based. The mere submission of a tax document - invoice and accounting - is not proof that the taxable supply took place as declared by the invoice, because it is technically possible to produce any document. The business transaction declared in this way can be regarded as a simulation, because the documents used and the acts performed did not in fact cause legal consequences (rights and obligations), but only sought to give third parties the impression that they produced such legal consequences.

The reason for not granting the right to deduct VAT, despite the presence of a "perfect" invoice with all the requisites for VAT purposes, may be one of the following circumstances, resulting from the findings made by the tax administrator:
- the material performance of the submitted invoices did not occur, thus the invoices proved to be unreliable, issued without a real basis,
- the declared delivery of the goods proved to be only formal, and no performance in kind took place,
- the purely artificial nature of the transaction is also demonstrated by the legal, economic, and personnel links between the business partners, whose sole purpose was to reduce the tax burden and to draw excessive deductions from the State budget.

- the audit has shown that the activity of the taxable person has no economic justification.

4 INSUFFICIENT INFORMATION WHICH MUST BE INCLUDED IN THE INVOICE

The impact of insufficient information on the invoice on the exercise of the right to deduct was assessed by the Court of Justice of the EU in Case C 516/14, Barlis 06 - Investimentos Imobiliários e Turísticos SA.

Barlis a company headquartered in Lisbon, Portugal, operates hotels and restaurants. Between 2008 and 2010, Barlis used the legal services of a law firm for which invoices were issued containing descriptions of services: invoice of 26 August 2008: "legal services provided from 1 December 2007 to the present day", invoice of 17 December 2008: "Legal fees provided from June to date", invoice of 29 April 2009: "legal fees provided to date".

Barlis claimed the right to deduct the VAT shown on those invoices. However, according to the tax office, Barlis was not entitled to deduct the VAT applicable to the legal services in question on the ground that the descriptions on the invoices in question issued by Barlis' lawyers were insufficient. Barlis provided related documents containing a more detailed description of the legal services concerned. According to the tax office, that deficiency cannot be remedied by the production of annexes showing the omissions, since those additions do not constitute 'equivalent documents'.

A question has been referred to the Court of Justice for a preliminary ruling as to whether the above description on the invoices is to be regarded as insufficient, given that the tax authorities may obtain the additional information it considers necessary to confirm the existence of the services in question. Information necessary to verify that the material conditions relating to the exercise of the right to deduct are met.

The Court of Justice of the EU has stated that Article 226 para. 6 of the VAT Directive requires that the invoice contain an indication of the scope and type of services provided. The wording of that provision thus indicates that it is necessary to specify the scope and type of services provided but does not state that it is necessary to describe exhaustively the specific services provided. The purpose of the information which must be given on the invoice is to enable the tax authorities to verify the payment of the tax due and, where appropriate, the existence of the right to deduct VAT.

In the present case, although it is clear that the services provided are regarded as 'legal services', that does not alter the fact that that concept covers a wide range of services and, in particular, services that do not necessarily result from economic activity. It follows that the concept of 'legal services provided from a certain date to date' or 'legal services provided to date' does not indicate in sufficient detail the type of services concerned. In addition, the concept is so general that it does not imply the scope of the services provided. That concept, therefore, does not a priori satisfy the conditions required by Article 226 (6) of the VAT Directive.

Article 226 (1) | 7 of the VAT Directive requires that the invoice contain the date on which the supply of services took place or ceased. In the present case, the legal services which were the subject of the invoices are billed gradually or paid gradually. Such provision of services shall be deemed to have taken place at the end of the periods to which those bills or payments relate. The invoices in question, relating to 'legal services provided from a certain date to the present day', specify the billing period. On the contrary, the invoice, which contains only the indication 'legal services provided to date', does not mention the start date of the period in question and it is therefore not possible to determine the period to which the bills in question relate.

It must therefore be concluded that an invoice containing only the indication 'legal services provided to date', which does not specify any date of commencement of the billing period, does not satisfy the conditions required by Article 226 (7) of the VAT Directive. However, it is necessary to verify that the attached documents submitted by Barlis contain a more detailed description of the legal services and can meet the requirements of an invoice under Article 219 of the VAT Directive as documents amending the original invoice and specifically and clearly applicable to it.

The purpose of the deduction system is to reduce, as a whole, the burden on the trader of the VAT due or paid in the course of all his economic activities. As a result, the common system of VAT ensures fiscal neutrality as regards the tax burden on all economic activities, whatever their objectives or results, provided that those activities are in principle subject to VAT.

As regards the material conditions required for the right to deduct VAT to arise, Article 168 (a) (a) of the VAT Directive, it follows that the goods or services giving rise to that right must be used by the taxable person at the exit for his taxable transactions and that those goods or services must be supplied at the input by another taxable person.

As regards the formal conditions for the exercise of this right, Article 178 (a) (a) of the VAT Directive, it follows that the exercise of that right is conditional on the possession of an invoice issued in accordance with Article 226 of the VAT Directive.

The basic principle of VAT neutrality requires that the deduction of input VAT be granted if the substantive requirements are met, even though certain formal requirements have been omitted by the taxable person. To the extent that the tax administration has the information necessary to estab-

lish that the substantive requirements are met, it may not impose additional conditions on the taxable person's right to deduct that tax, which could have the effect of reducing the exercise of that right to such an effect.

It follows that the tax authorities cannot refuse to deduct VAT on the sole ground that the invoice does not satisfy the conditions required by Article 226 (6) and (7) of the VAT Directive if it has all the information necessary to verify that the material conditions relating to that right are met.

The tax administration cannot be limited to examining the invoice itself. It must also consider additional information provided by the taxable person. This finding is confirmed by Article 219 of the VAT Directive, according to which any document or notification which amends the original invoice, and which applies specifically and unequivocally to it is considered to be an invoice.

In the present case, it is, therefore, necessary to take into account all the information contained in the invoices and attached documents submitted by Barlis in order to verify whether the substantive conditions for its right to deduct VAT are met.

Therefore, the tax authorities should not refuse the right to deduct VAT on the sole ground that the taxable person has an invoice that does not satisfy the conditions required by Article 226 (6) and (7) of the VAT Directive, even though they have all the information necessary to verify that they are factual. The conditions for exercising this right are met.

5 COMPLETION OF THE MISSING VAT IDENTIFICATION NUMBER DURING PERFORMANCE OF TAX INSPECTION

The facts of Case C 518/14, Senatex GmbH, were that the company operated a textile wholesaler. In each of its tax returns for the years 2008 to 2011, it stated the deduction of input VAT, based on a statement of commission in respect of its sales representatives, as well as based on the author's invoices.

The Tax Administration concluded that the deduction of input VAT paid on the basis of the commission statements issued by Senatex to its sales representatives was not possible, as such statements did not constitute proper invoices as they did not contain the tax identification number or VAT identification number of their addressee. Also, these accounts do not refer to any other document from which these data could be derived. For the same reasons, the tax administration found that even the deduction made on the basis of the invoices issued by the author of the advertisement was not justified.

During the inspection, Senatex corrected the commission statements for the years 2009 to 2011 in respect of its sales representatives in such a way that the tax identification number or VAT identification number of each sales representative was added to those documents. The invoices of the author of the advertisement for the years 2009 to 2011 were also corrected accordingly with the same date, ie during the on-site inspection.

Nevertheless, the tax administration did not recognize the tax deduction on the grounds that the conditions for this deduction were not met for those years but were only met at the time of the correction of the invoices, ie during 2013.

Questions have been referred to the Court of Justice of the EU regarding the possibility of retroactive effect of supplementing an incomplete invoice.

In the present case, the VAT identification number provided for in Article 226 (3) of the VAT Directive was originally missing from the invoices and bills, a number which Senatex did not add until several years later after the date of issue of those documents. It was not disputed that the invoices and bills in question contained the additional information required by that article.

The VAT Directive regulates the possibility of correcting an invoice on which some mandatory data was missing. This follows from Article 219, which states that "any document or notification which amends the original invoice, and which applies specifically and unambiguously to it shall be considered an invoice". It is common ground that the invoices in the present case were properly corrected.

The basic principle of VAT neutrality requires that the deduction of that input tax be granted if the substantive requirements are met, even though certain formal requirements have not been met by the taxable person. Ownership of an invoice containing the information referred to in Article 226 of the VAT Directive is a formal rather than a substantive condition for the right to deduct VAT.

The Court of Justice of the EU has concluded that the tax administration is not correct in the view that the correction of an invoice relating to compulsory information, in particular a VAT identification number, does not produce retroactive effects and that the right to deduct VAT made based on a corrected invoice can only be exercised for one year, in which the invoice was corrected and not for the year in which the invoice was originally issued.

6 NON-COMPLIANCE WITH THE RULES OF TRANSFER OF TAX LIABILITY-IMPACT ON TAX DEDUCTION

In Case C 564/15 Tibor Farkas, Mr. Farkas bought a mobile hangar in an electronic auction organized by the tax authori-

ties from a limited liability company that was a tax debtor. The seller in question issued an invoice stating the VAT associated with that transaction in accordance with the rules of the general tax regime. When Mr. Farkaš paid the purchase price at the auction, he also paid the VAT quoted by the seller, who paid that tax to the Hungarian tax administration.

Mr. Farkas claimed a deduction of VAT on the tax shown on the invoice. The tax authority found that the rules concerning the reverse charge system, according to which Mr. Farkas, as the purchaser of the goods, had to pay the VAT directly to the Exchequer, had not been complied.

Mr. Farkas claims that the Hungarian tax administration denied his right to deduct VAT based on formal deficiencies in that the invoice in question was issued in accordance with the general tax regime instead of the reverse charge mechanism and that the tax administration thereby infringed European Union law. It considers that the decision to pay the tax arrears is unfounded because the VAT in question was paid to the Exchequer by the seller concerned. Mr. Farkas brought an action before the national court asking the Court whether the refusal of his right to deduct was compatible with European Union law.

The invoice in question does not contain the words 'reverse charge', Mr. Farkas incorrectly paid the VAT incorrectly stated in that invoice to the seller, although he had to pay VAT to the tax authorities in accordance with Article 199 (1) under the reverse charge mechanism. 1 letter g) the VAT Directive. **In addition to the fact that that invoice does not comply with the formal requirements laid down by national law, the substantive requirement of that mechanism has not complied with either.**

The exercise of the right to deduct tax is limited to taxes due, i.e. j. taxes corresponding to a transaction subject to VAT or paid to the extent that they were due. However, the VAT paid by Mr. Farkas to the mobile hangar dealer was not due. As the VAT was not due and its payment did not comply with the substantive requirement of the reverse charge procedure, Mr. Farkas could not claim the right to deduct that VAT.

However, Mr. Farkas may claim a refund of the tax which he has paid without legal justification to that mobile hangar dealer in accordance with national law. In that regard, the Court has already held that, in the absence of European Union legislation on refund applications, it is for the national law of each Member State to lay down the conditions under which such applications may be made, respecting the principles of equivalence and effectiveness. Less favorable than conditions relating to similar applications based on provisions of national law, nor laid down in such a way as to make it practically impossible to exercise the rights conferred by the legal order of the Union.

Since it is, in principle, for the Member States to determine the conditions under which VAT invoiced without legal justification may be corrected, the Court has held that a system in which, on the one hand, a seller of goods who has wrongly paid VAT to the tax authorities may claim a refund and on the other hand, the purchaser of those goods may, under civil law, bring an action for unjust enrichment against that seller, respecting the principles of neutrality and efficiency. Such a system enables that transferee, who has borne the tax invoiced in error, to obtain a refund of sums paid without legal justification.

However, if the refund becomes impossible or excessively difficult, in particular in the event of the seller's insolvency, the principle of effectiveness may require that the purchaser of the goods concerned be able to address his request for a refund directly to the tax authorities. Thus, in order to comply with the principle of effectiveness, the Member States must adopt the instruments and procedures necessary to enable that acquirer to recover the tax invoiced without legal justification.

In the main proceedings, it should be noted, first, that the order for reference shows that the dealer who supplied the mobile hangar in the main proceedings is in liquidation, which may mean that it will be extremely difficult or impossible for Mr. Farkas to obtain a refund. VAT invoiced to him by that seller without legal justification.

In addition, following a decision of the Hungarian tax authorities, Mr. Farkas was considered to be liable to pay this VAT to the Exchequer, even though he had already paid it to that seller. It is for the national court to determine whether Mr. Farkas has the option of obtaining from that dealer a refund of the tax paid without legal justification.

In the present case, there is no indication that fraud has taken place, with the seller who issued the invoice paying VAT to the Exchequer, which has not suffered any damage, since the invoice was incorrectly issued under the general tax regime instead of the mechanism transfer of tax liability.

If in those circumstances, it is impossible or excessively difficult for the seller concerned to recover VAT which has been invoiced without a legal reason to the purchaser of the goods in question, in particular, because that seller is insolvent, the purchaser (Mr. Farkaš) must be able to: apply directly to the tax authority for your tax refund

7 EXCLUSION OF THE RIGHT TO DEDUCT TAX IN THE EVENT OF FAILURE TO FILE A TAX RETURN AND FAILURE TO KEEP ACCOUNTS

In Case C 332/15, Giuseppe Astone, the facts were that during a tax audit initiated on 4 July 2013, the Financial Policy, Italy found that Mr. Astone, as Del Ferro's representative, had not

been able to submit the accounts or VAT records for 2010, 2011, 2012 and 2013 tax periods. The audit also revealed that for the 2010 tax period, the company issued invoices for a VAT amount of EUR 320 205, by failing to file a tax return for the relevant VAT, avoiding payment of EUR 64 041. And that at the same time it did not file a VAT return at all for the following tax periods. That inspection also revealed that Del Ferro had failed to register the invoices issued.

Mr. Astone, as Del Ferro's statutory representative, is being prosecuted for failing to file a VAT return for the 2010 tax period.

During that procedure, Mr. Astone submitted invoices issued by third parties to Del Ferro during the 2010 tax period, which were paid including VAT but were not recorded in Del Ferro's accounts. On the basis of those invoices, the amount of deductible VAT was set at EUR 30 590. Mr. Astone claims that those invoices should have been taken into account in accordance with the case-law of the Court concerning the right to deduct VAT paid by the taxable person on entry. In view of that amount of deductible VAT and the previous tax credit in its favor, the amount of unrecognized tax did not exceed EUR 30 000, as a result of which no criminal offense was imposed for which a penalty may be imposed.

The Court has been referred for a preliminary ruling as to whether it is excluded, including from a criminal point of view, for a taxpayer to exercise the right to deduct if he has not lodged a VAT return, and in particular a tax return for the second year following the year in which the right to deduct arose. Deduction of tax and also to deduct VAT to take into account paid invoices, which the taxpayer does not record in any way.

In the present case, the taxable person wished to exercise the right to deduct input VAT only during the proceedings before the national court, whereas under Italian law that right is to be exercised at the latest in the tax return for the second year following the year in which the right to deduct arose.

Under Articles 180 and 182 of the VAT Directive, a taxable person may be entitled to deduct tax even if he has not exercised his right during the period in which that right arose, but subject to compliance with certain conditions and requirements laid down by national law.

However, the possibility of exercising the right to deduct tax without any time limit would be contrary to the principle of legal certainty, which requires that the tax situation of a taxable person in relation to his rights and obligations in relation to the tax administration cannot be disputed indefinitely.

The Court has already ruled, in connection with the application of the reverse charge system, that a limitation period, the expiry of which leads to the punishment of a diligently taxable person who has failed to claim a deduction VAT. As regards the principle of effectiveness, the Court has already held that a limitation period of two years, such as that provided for in the Italian Law on VAT, cannot in itself preclude or unduly impede the exercise of the right to deduct, since Article 167 and Article 179 (1) The VAT directives allow the Member States to require a taxable person to exercise his right to deduct for the same period as that in which that right arose

National legislation may provide for a limitation period for the exercise of the right to deduct, provided that the principles of equivalence and effectiveness are complied with.

For the 2010 tax period, in which criminal proceedings are pending against a taxable person (defendant), was unable to submit accounting documents or VAT records for the company of which is a statutory representative. In addition, it follows that that company did not file a VAT return, although it issued invoices for a VAT amount of EUR 320 205, that it did not pay the VAT which is owed, that it did not comply with the obligation to register invoices issued and that it did not comply with the obligation to register invoices, issued to it by third parties and which is paid.

The national court asks whether the tax authorities may refuse to grant a taxable person a right to deduct VAT if it is established that that taxable person has failed to fulfill most of the formal obligations incumbent on him to exercise that right.

Since the refusal of the right to deduct is an exception to the application of the fundamental principle of that right, it is for the competent tax authorities to prove to the requisite legal standard that the objective evidence of fraud or abuse is satisfied.

It is then for the national court to ascertain whether the tax authorities in question have established the existence of such objective facts.

In the present case, the defendant against whom the criminal proceedings are being brought not only failed to file an obligation to file a VAT return with the administrative authority and to pay the taxes owed by the company of which it is a statutory representative but also did not submit accounting documents or VAT records. for that company and failed to comply with the obligation laid down by Italian law to keep, in respect of invoices issued or paid by that company, the records of those invoices in that order.

Even if those breaches of those formal obligations, which were incumbent on the defendant as the statutory representative of Del Ferro for the purposes of the application of VAT and its control by the tax authorities, did not preclude the submission of clear evidence that the substantive requirements deduction of input VAT has been met, it must be stated that such circumstances may prove the existence of the simplest case of tax evasion when **the taxable person intentionally fails to com-**

ply with the formal obligations incumbent on him in order to avoid paying the tax.

Failure to file a VAT return, as well as failure to keep accounts that would allow VAT to be applied and monitored by the tax administration, and the absence of records of invoices issued and paid, may impede the proper collection of the tax and, as a result, disrupt the proper functioning of the common VAT system. Union law, therefore, does not prevent the Member States from treating such infringements as tax fraud, in which case they deny the right to deduct.

In the present case, similar defaults were repeated during several subsequent tax periods. The refusal of the right to deduct in circumstances where there has been a tax evasion by a taxable person seeking to exercise that right cannot be regarded as contrary to the principle of fiscal neutrality, a principle which cannot be validly relied on by a taxable person who has intentionally participated in such tax fraud and jeopardize the functioning of the common VAT system.

Therefore, a tax administration can refuse to grant a taxable person a right to deduct VAT if it is established that that taxable person has fraudulently failed to fulfill most of the formal obligations incumbent on him to exercise that right.

8 CANCELLATION OF VAT IDENTIFICATION AND ISSUANCE OF VAT INVOICES

In Case C 159/17, Întreprinderea individuală Well M. Marius (hereinafter referred to as Dobre"), a company registered for VAT in Romania for the period from 13 July 2011 until 31 July 2012.

It did not file the VAT returns for the fourth quarter of 2011 and for the first quarter of 2012 well, which led to its deregistration of VAT from 1 August 2012. From 1 August 2012 to 31 July 2013, it continued to issue VAT-related invoices. Without filing the related VAT returns. On 30 January 2014, Dobre filed VAT returns relating to the fourth quarter of 2011 as well as the first and second quarters of 2012.

Following a tax audit carried out between 1 July and 4 August 2015, the tax administration issued a tax notice requiring Dobre to pay, in particular, the sum of 183 301 Romanian lei (RON) (approximately EUR 39 982), corresponding to the VAT it received during the period which has not been registered for VAT.

Dobre claimed a deduction of RON 123 266 (approximately EUR 26 887) from the amount claimed for VAT paid on goods and services which is used to provide legal persons with services corresponding to its object of business for the period during which it was not registered for VAT, which the tax administration refused.

A question has been referred to the Court of Justice for a preliminary ruling as to whether the tax authorities may deny a taxable person the right to deduct VAT if his VAT identification has been canceled on the ground that he failed to file a VAT return within the statutory period.

The VAT identification provided for in Article 214 of the VAT Directive, as well as the obligation of the taxable person to notify the commencement, change or cessation of his activity under Article 213 of that Directive, constitute only formal control requirements which cannot, in particular, call into question the right to deduct VAT. The conditions under which this right arises are met.

It follows that a taxable person for VAT purposes cannot be prevented from exercising his right to deduct on the ground that he was not registered for VAT purposes before using the goods acquired in the course of his taxable activity.

This may not be the case where a breach of such formal requirements has resulted in the inability to provide unequivocal evidence that the substantive requirements have been met. The refusal of the right to deduct depends more on the absence of the information necessary to demonstrate that the substantive requirements are met than on the failure to comply with a formal requirement.

Similarly, the right to deduct may be denied if it is established, taking into consideration of objective facts, that that right is exercised fraudulently or abusively.

In the present case, it is apparent from the order for reference that the deregistration of Dobre's VAT identification took place on the ground that that taxable person did not file his VAT returns for the fourth quarter of 2011 and for the first and second quarter of 2012. On the other hand, that taxable person did not file such returns between August 2012 and July 2013, continuing to issue invoices including VAT, so that the tax authorities did not grant him the right to deduct VAT for that period.

In order for the right to deduct to be granted, it is necessary for the person concerned to be a 'taxable person' within the meaning of that directive and for the goods or services giving rise to that right to be used by the taxable person for his taxable transactions. The goods or services on entry were supplied or provided by another taxable person.

Even if formal defaults do not preclude the submission of clear evidence that the substantive requirements establishing the right to deduct input VAT have been met, such circumstances may prove the existence of the simplest case of tax evasion where the taxable person intentionally fails to avoid paying the tax. Formal obligations incumbent on it.

Failure to file a VAT return, which would allow VAT to be applied and monitored by the tax authorities, may hinder the

proper collection of the tax and, as a result, disrupt the proper functioning of the common system of VAT. Therefore, Union law does not preclude such breaches from being regarded as tax fraud, in which case the right to deduct is denied.

9 Conclusion

The tax administration may deny a taxable person the right to deduct VAT if it is established that, because the taxable person failed to fulfil his obligations, the tax administration could not have the information necessary to prove that the substantive requirements under that taxable person deducted input VAT are fulfilled or that the person has acted fraudulently in order to obtain that right, which must be verified by the national court.

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