Case C-346/19

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

2 May 2019

Referring court:

Bundesfinanzhof (Federal Finance Court, Germany)

Date of the decision to refer:

13 February 2019

Defendant and appellant in the appeal on a point of law:

Bundeszentralamt für Steuern (Federal Central Tax Office)

Applicant and respondent in the appeal on a point of law:

Y-GmbH

Subject matter of the main proceedings

Value added tax — Refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State — Indication of a reference number instead of an invoice number

Subject matter and legal basis of the reference

Interpretation of EU law, Article 267 TFEU

Questions referred

1. Is Article 8(2)(d) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (Directive 2008/9/EC), according to which the refund application is to set out, for each

Member State of refund and for each invoice, inter alia, the number of the invoice, to be interpreted as meaning that it is also sufficient to state the reference number of an invoice, which is shown on an invoice document as an additional classification criterion alongside the invoice number?

2. If the above question is to be answered in the negative: Is a refund application in which the reference number of an invoice has been indicated instead of the invoice number to be considered formally complete and submitted within the deadline for the purpose of the second sentence of Article 15(1) of Directive 2008/9/EC?

3. Should consideration be given, when answering Question 2, to the fact that the taxable person not established in the Member State of refund was, from the point of view of a reasonable applicant, and given the design of the electronic portal in the State of establishment and the form provided by the Member State of refund, entitled to assume that, for the application to have been properly made, or in any event to be formally complete and timely, entering an indicator other than the invoice number is sufficient for the purpose of identifying the invoice to which the refund application relates?

Provisions of EU law cited

Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, in particular Article 8(2)(d) and the second sentence of Article 15(1)

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in particular point (2) of Article 226

Provisions of national law cited

The first and second sentences of Paragraph 18(9) of the Umsatzsteuergesetz (Law on Turnover Tax; UStG) in the version applicable to the dispute in the main proceedings by virtue of Article 7(13)(c) of the Jahressteuergesetz (Annual Tax Law) 2009

Paragraph 59 et seq. of the Umsatzsteuer-Durchführungsverordnung (Turnover Tax Implementing Regulation; UStDV) in the version relevant to the refund period by virtue of the Jahressteuergesetz 2009

Brief summary of the facts and procedure

1 The applicant is a company established in Austria. On 29 October 2012, it applied for an input tax refund for the period from July to September 2012. The refund

application was sent electronically to the defendant, the Federal Central Tax Office (Germany), via the portal set up by the fiscal administration in Austria.

2 The application concerned invoices for the delivery of fuel, on the basis of which the applicant is claiming the input tax deduction. In the annex to the application, the applicant had not entered the invoice number shown on the respective invoices, but had entered a further reference number noted on the invoice and recorded in the applicant's accounts.

3 By decision of 25 January 2013, the Federal Central Tax Office fixed the input tax refund for the period in question at EUR 31 296.09 and otherwise refused the application on the grounds that, contrary to the statutory requirements, the invoice numbers indicated on the invoices had not been entered in the annex to the application.

4 The Federal Central Tax Office maintained that opinion in the decision of 7 January 2014 regarding the applicant's objection. The applicant had failed to submit an input tax refund application meeting the statutory requirements within the application period, which expired on 30 September 2013. The applicant had already been notified of the failure to indicate the invoice number in the context of earlier applications. It would therefore have been possible for the applicant to file the information in the legally required form within the application period.

5 The applicant brought an action before the Finanzgericht Köln (Finance Court of Cologne, Germany), which allowed the action, as it considered the refund application to have been properly made. According to that court, the erroneous indication of a reference number instead of the invoice number did not render the input tax refund application invalid if, as here, it could not be regarded as 'devoid of content', as the reference number also enabled a particular invoice to be identified.

6 The Federal Central Tax Office lodged an appeal on a point of law against that judgment at the Federal Finance Court (Germany). In its opinion, the Finance Court of Cologne misinterpreted Article 8(2) of Directive 2008/9.

Brief summary of the basis for the reference

7 On the basis of national law, the referring court would confirm the decision of the Finance Court of Cologne and dismiss the appeal on a point of law as unfounded. However, it questions whether this conclusion is in line with EU law, as it has doubts regarding the correct interpretation of Article 8(2)(d) and the second sentence of Article 15(1) of Directive 2008/9.

8 With regard to the first question: It is doubtful whether Article 8(2)(d) of Directive 2008/9, according to which the refund application is to set out, for each Member State of refund and for each invoice, inter alia, the 'number of the invoice', can be interpreted as meaning that it is also sufficient to indicate the

reference number of an invoice, which is indicated on an invoice as an additional criterion alongside the invoice number.

9 The referring court also questions whether the term 'number of the invoice' in Article 8(2)(d) of Directive 2008/9 means the same as the 'sequential number, based on one or more series, which uniquely identifies the invoice' required under point (2) of Article 226 of Directive 2006/112. The differing wording in point (2) of Article 226 of Directive 2006/112 and Article 8(2)(d) of Directive 2008/9 suggests that it is sufficient, in order for an input tax refund application to be valid, to indicate a criterion which is indicated on the invoice and allows that invoice to be identified; however, this does not necessarily have to be the invoice number as referred to in point (2) of Article 226 of Directive 2006/112, another identification criterion shown on the invoice being also sufficient.

10 Consideration should be given in this regard to the fact that it is not the purpose of Directive 2008/9 to define the conditions for exercising the right to a refund, nor the extent of that right. The second paragraph of Article 5 of Directive 2008/9 provides that, without prejudice to Article 6, entitlement to an input tax refund is to be determined pursuant to Directive 2006/112 as applied in the Member State of refund (see judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraph 35).

11 The right of a taxable person established in a Member State to obtain the refund of VAT paid in another Member State, in the manner governed by Directive 2008/9, is consequently the counterpart of such a person's right established by Directive 2006/112 to deduct input VAT in his own Member State (see judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraph 36 and the case-law cited therein). The deduction system, and accordingly the refund system, is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all his economic activities. The common system of VAT therefore ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves, in principle, subject to VAT (see judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraph 38 and the case-law cited therein). Therefore, in the view of the referring court, the principle of neutrality requires the 'number of the invoice' in Article 8(2)(d) of Directive 2008/9 to be understood as meaning that the indication of a further, clear classification criterion shown on the invoice is also sufficient in the context of the refund application.

12 That could be precluded by the fact that the right to deduct VAT is subject to compliance with both substantive and formal requirements or conditions (see judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraph 40 and the case-law cited therein). As to the detailed rules governing the exercise of the right to deduct, Article 178(a) of Directive 2006/112 provides that the taxable person must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238 to 240 of that directive (see judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraph 42 and the

case-law cited therein). Accordingly, Article 8(2)(d) of Directive 2008/9 may have to be understood restrictively in the sense that, in the context of a refund application, only the indication of the invoice number as referred to in point (2) of Article 226 of Directive 2006/112 meets the requirements.

13 However, a strict understanding of Article 8(2)(d) of Directive 2008/9 could result in disproportionate outcomes. The fully completed application for an input tax refund is intended to enable the authority to examine the conditions for the tax refund in a prompt manner (that is to say, within four months of receipt of the refund application, see Article 19(2) of Directive 2008/9). From this perspective, Article 8(2)(d) of Directive 2008/9 is satisfied by the reference number indicated in the application, because, in the context of the authority's examination of the input tax refund application, it enables the invoice to be clearly identified. The indication of the invoice number as referred to in point (2) of Article 226 of Directive 2006/112 in the refund application is appropriate and expedient, but not necessary, for achieving the objective of being able to clearly identify the invoice.

14 With regard to the second question: If the first question is to be answered in the negative, the referring court would like to know whether a refund application in which the reference number of the invoice has been indicated is to be regarded as formally complete and submitted within the deadline for the purpose of the second sentence of Article 15(1) of Directive 2008/9.

15 According to the second sentence of Article 15(1) of Directive 2008/9, the application is to be considered submitted only if the applicant fills in all the information required under, inter alia, Article 8 of Directive 2008/9. In the event that the first question referred is to be answered in the negative, the referring court is of the opinion that an application which contains a functionally identical reference number instead of the invoice number as referred to in point (2) of Article 226 of Directive 2006/112 would be incorrect, but not incomplete.

16 The referring court is of the opinion that the validity of an input tax refund application within the meaning of the second sentence of Article 15(1) of Directive 2008/9 does not require it to be correct in terms of content, but to be formally complete. This is also recognisably consistent with the view taken by the European Commission. On 24 January 2019, it decided to bring an action against the Federal Republic of Germany before the Court of Justice, because applications for a value added tax refund by undertakings from other Member States are being refused without additional details being obtained from the refund applicant where, in the view of the German authorities, the information on the type of items delivered or services provided is not sufficient for a decision to be made on a value added tax refund.

17 With regard to the third question: The referring court questions whether the applicant, as a taxable person not established in the Member State of refund, was entitled to assume, as regards the refund application being made in good time for the purpose of the second sentence of Article 15(1) of Directive 2008/9, that, from

the point of view of a reasonable applicant, for the application to have been properly made, or in any event to be formally complete and timely, entering an indicator other than the invoice number is sufficient for the purpose of identifying the invoice to which the refund application relates.

18 This question is raised because, according to the findings of the Finance Court of Cologne, the relevant column in the annex to the refund application in which, according to the Federal Central Tax Office, the invoice number must be entered does not even bear the designation ‘invoice number’ but appears below the general heading ‘Supporting document No’. Furthermore, the portal for making electronic applications, provided by the Austrian administration and used by the applicant, contains a further, different designation, namely ‘reference number’.