Case C-610/19

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:

13 August 2019

Referring court:

Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court)

Date of the decision to refer:

5 July 2019

Applicant:

Vikingo Fővállalkozó Kft.

Defendant:

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary)

Subject matter of the main proceedings

Administrative-law action against a decision of the national tax authority refusing the right to deduct VAT on the basis that that authority required, in connection with invoices, evidential material additional to that required by EU law and, in the absence of such evidential material, classified the transactions in question as fictitious.

Subject matter and legal basis of the request for a preliminary ruling

Interpretation of Articles 168(a) and l78(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in conjunction with Articles 220(a) and 226 of the same directive; interpretation of the principles of fiscal neutrality and effectiveness and of Article 47 of the Charter of Fundamental Rights of the European Union.

Questions referred for a preliminary ruling

1. Is it compatible with Articles 168(a) and 178(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax in conjunction with Articles 220(a) and 226 of that directive, and with the principle of effectiveness, for a national legal interpretation and a national practice to operate (i) to the effect that the mere fact of being in possession of an invoice the content of which meets the requirements of Article 226 of that directive is not sufficient to fulfil the material conditions governing the right to deduct tax, the taxable person also being compelled, as a prerequisite of legitimately exercising the right to deduct tax on the basis of the invoice in question, to be in possession of additional documentary evidence that must not only comply with the provisions of Directive 2006/112 but also be consistent with the principles of the national legislation on accounting and the specific provisions concerning supporting documents, as well as (ii) to the effect that each member of the chain must recall and declare in the same way each detail of the economic transaction attested by those supporting documents?

2. Is it compatible with the provisions of Directive 2006/112 on [the deduction of VAT] and with the principles of fiscal neutrality and of effectiveness for a national legal interpretation and a national practice to operate (i) to the effect that, in the case of a chain transaction, the mere fact that the transaction forms part of a chain has the consequence, irrespective of any other circumstance, of imposing on each of the members of that chain an obligation to scrutinise the components of the economic transaction carried out by them and a duty to draw inferences from that scrutiny for the taxable person situated at the other end of the chain, as well as (ii) to the effect that the taxable person is refused the right to [deduct VAT] on the ground that the constitution of the chain, although not prohibited by national law, was not [reasonably] justified from an economic point of view? In that context, when it comes to examining the objective circumstances capable of justifying a refusal to grant the right [to deduct VAT] in the case of a chain transaction, is it possible, when determining and assessing the relevance and probative force of the evidential material on which the refusal of the right to deduct VAT is based, to apply only the provisions of Directive 2006/112 and national law relating to the deduction of tax, as material provisions specifying the facts relevant to the determination of the factual framework, or is there also a duty to apply, as special provisions, the accounting legislation of the Member State in question?

3. Is it compatible with the provisions of Directive 2006/112 on [the deduction of VAT] and with the principles of fiscal neutrality and of effectiveness for a national legal interpretation and a national practice to operate (i) to the effect that a taxable person who uses goods for the purposes of his taxed transactions in the Member State in which he carries out those transactions and who is in possession of an invoice consistent with Directive 2006/112 is

denied the right [to deduct VAT] on the ground that he is not aware of all the components [of the transaction] carried out by the members of the chain or on the basis of circumstances associated with the members of the chain upstream of the issuer of the invoice and over which the taxable person was unable to bring to bear any influence for reasons beyond his control, as well as (ii) to the effect that the right to [deduct VAT] is made subject to the condition that, so far as concerns the measures reasonably incumbent upon him, the taxable person must comply with a general obligation of scrutiny that must be discharged not only before the contract is concluded but also during and even after its performance? In that context, is the taxable person obliged to refrain from exercising the right [to deduct VAT] in the case where, in connection with any component of the economic transaction indicated on the invoice and at any point subsequent to the conclusion of the contract or during or after its performance, he notices an irregularity or becomes aware of a circumstance the consequence of which would be the refusal of the right [to deduct VAT] pursuant to the practice of the tax authority?

4. Having regard to the provisions of Directive 2006/112 relating to [the deduction of VAT] and the principle of effectiveness, does the tax authority have an obligation to specify how tax evasion has been committed? Is it appropriate for the tax authority to proceed in such a way that omissions and irregularities on the part of members of the chain that exhibit no reasonable causal link with the right to [deduct tax] are regarded as proof of tax evasion on the ground that, since those omissions and irregularities rendered the content of the invoice implausible, the taxable person knew or should have known about the tax evasion? If tax evasion has been committed, does this justify the fact that the scrutiny required of the taxable person must exhibit the breadth, depth and scope indicated above or does that duty exceed the requirements of the principle of effectiveness?

5. Is a penalty involving refusal of the right [to deduct VAT] and consisting in the obligation to pay a tax penalty equal to 200% of the tax difference proportionate in the case where the tax authority has incurred no loss of revenue directly linked to the taxable person's right [to deduct VAT]? May account be taken of the presence of any of the circumstances referred to in the third sentence of Article 170(1) of the az adózás rendjéről szóló 2003. évi XCII. törvény (Law XCII of 2003 on General Taxation Procedure; 'the Law on General Taxation Procedure') in the case where the taxable person has made available to the tax authority all the documents that were in his possession and has included in his tax return the invoices issued?

6. In the event that it is apparent from the answers given to the questions referred for a preliminary ruling that the interpretation of the rule of national law which has been followed since the case that gave rise to the order of 10 November 2016, *Signum Alfa Sped* (C-446/15, [not published,] EU:C:2016:869) and the practice adopted on the basis of that interpretation

are not consistent with the provisions of Directive 2006/112 relating to [the deduction of VAT], and having regard to the fact that the first-instance court cannot make a request for a preliminary ruling to the Court of Justice in all cases, may the view be taken, on the basis of Article 47 of the Charter of Fundamental Rights of the European Union, that the right of taxable persons to bring a judicial action for damages guarantees them the right to an effective remedy and an impartial tribunal provided for in that article? Is it possible, in that context, to adopt an interpretation to the effect that the form of the decision given in *Signum Alfa Sped* means that the question had already been regulated by Community law and had been clarified by the case-law of the Court of Justice and that, consequently, the answer to it was obvious, or does it mean that, since new proceedings were instituted, the question had not been fully clarified and, consequently, there was still a need to seek a preliminary ruling from the Court of Justice?

Provisions of EU law relied on

Articles 9(1), 167, 168(a), l78(a), 220(a) and 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

Article 47 of the Charter of Fundamental Rights of the European Union.

Provisions of national law relied on

Law on General Taxation Procedure, Articles 2(1), 97(4) and (6), 170(1) and 171(1) and (2).

Az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on Value Added Tax; 'the Law on VAT'), Articles 27(1), 26, 119(1), 120(a) and 127(1)(a).

A számvitelről szóló 2000. évi C. törvény (Law C of 2000 on Accounting; 'the Law on Accounting'), Articles 1, 15(3) and 166(1) and (2).

Brief presentation of the facts and procedure in the main proceedings

1 The applicant company's principal business is the wholesale trade in sweets and confectionery. The company has an establishment in Tiszaföldvár. That establishment is also the place of business of the company Nikus Kft. The two companies share the same director. Nikus Kft. manufactures the confectionery products which the applicant packages, packs, stores and markets.

2 On 20 March 2012, the applicant concluded with Freest Kft. a contract for the supply of ten packaging machines and one filling machine. In the contract, the parties agreed that the service could be subcontracted if necessary.

3 On 21 May 2012, the applicant concluded with Freest Kft. a contract for the purchase and transportation to the applicant's establishment of six packaging machines and an automatic bagging machine. As agreed in those contracts, the applicant exercised the right to deduct the value added tax (VAT) on each of the two invoices issued by Freest Kft. The machines sold under those contracts were purchased for the applicant by Freest Kft. from SPDC Kft., which in turn purchased them from Free-Gold Kft.

4 The first-tier tax authority carried out an inspection of the applicant's VAT returns for the second and fourth quarters of 2012 and the first quarter of 2013. In the course of that inspection, the tax authority, on 11 July 2013, conducted an on-site check at the applicant's place of business. According to the record of that check, the machines in respect of which the right to deduct had been exercised were located on those premises.

5 On the basis of that inspection, the first-tier tax authority, in two decisions, found there to be a VAT tax difference owed by the applicant in the amount of 8 020 000.00 Hungarian forints (HUF) in relation to the second and fourth quarters of 2012, and of HUF 13 257 000.00 in relation to the first quarter of 2013: those amounts were broken down under two headings, first, the unjustified recovery of input tax and, secondly, tax debt, in respect of which the tax authority imposed a tax penalty and applied a late-payment surcharge.

6 In the grounds of those decisions it was stated that, as annexes to the invoices used to support the deduction of VAT, the applicant had provided the estimate drawn up by Freest Kft., the transport contracts and the purchase order, together with the transit and receipt documents and the machine manuals. According to those transit documents, Freest Kft. dispatched the machines indicated on them to the applicant. The applicant commissioned Freest Kft. to purchase the machines knowing that it did not manufacture such machines itself and that the purchase would therefore involve a number of subcontractors. The director satisfied itself that the company was active.

7 During the inspections and checks carried out, the tax authority also found that the discrepancies between the parties on the invoices showed that the economic transaction could not have taken place since the applicant had also purchased machines which it could have purchased itself, which the subcontractor did not possess and which the manufacturer could not have purchased because it did not have the necessary material and human resources. According to the tax authority, the origin of the machines recorded on the invoices is unknown, and the purpose of the transaction was to substantiate the origin of the machines of unknown origin recorded on the invoices, evade the obligation to pay tax incumbent on Free-Gold Kft., which is situated at the bottom of the sales chain, and generate a right to deduct for the applicant. To that end, the parties mentioned on the invoices increased the prices slightly so as to enable the applicant to deduct the maximum amount of VAT possible on the basis of unreliable supporting documents and to prevent payment of the tax burden corresponding to the goods from falling to

Free-Gold Kft. Since the machines are located at the applicant's business premises, the tax authority took the view that the applicant had somehow purchased them from an unknown person and, for that reason, the transaction had not taken place between the persons mentioned on the invoices or in the way indicated there and that the applicant was aware of those circumstances. On the basis of the foregoing, the tax authority found, in accordance with the provisions of Article 1(7) and Article 2(1) of the Law on General Taxation Procedure, that Freest Kft. had not exercised its rights for the purpose for which they were intended but had acted with the sole aim of passing on tax in breach of the rules and in circumvention of the tax provisions, with the result that such actions could not bring about the legal effects pursued by the applicant (deduction of tax). Consequently, it refused the applicant's right to deduct VAT.

8 The second-tier tax authority upheld one of the decisions given by the first-tier tax authority and amended the second of those decisions by correcting the amount of tax debt imposed on the taxable person as well as the amounts of the tax penalty and late-payment surcharge based on that debt.

9 The applicant brought an action against those decisions before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court).

Main arguments of the parties to the main proceedings

10 In its actions, the applicant refutes the facts established by the defendant and the consequence it infers from them. In support of its position, the applicant submits that the defendant carried out its assessment of the facts on the basis of probabilities rather than on relevant facts or on evidence. In the applicant's view, the relevant fact is that, in order to increase its capacity, it ordered the machines mentioned on the invoices and, before concluding the contract, requested an extract from the commercial register and a specimen signature from the undertaking in order to satisfy itself that the undertaking was liable to tax and an active company. The contract provided for the possibility of using subcontractors for the purposes of its performance. The applicant did not know the identity of the subcontractors until the contract was performed. The machines were put into operation by the applicant and it is still using them now. As regards the performance of the contract, the undertaking issued invoices in accordance with the rules — a fact recognised by the defendant itself — on which VAT was applied and which the applicant recorded in its quarterly VAT return, so that the applicant's recovery of input tax was legitimate, the material and legal conditions for such recovery having been met. The tax authority adduced no relevant evidence to refute those facts, drew erroneous conclusions with respect to the availability, transportation and financing of the machines and based the assessment of the facts on alleged discrepancies. Contrary to what the defendant has submitted, the undertaking was not contracted to manufacture the machines but to supply them, and it was therefore immaterial whether the undertaking

manufactured them itself or contracted a third party to do so. Consequently, the claim that the undertaking lacked human and material resources, and the conclusion that the purpose of the transaction was to create a right to deduct for the applicant, enable the subcontractor undertaking to evade its tax obligations and certify the origin of machines of unknown origin, were without foundation. The applicant acted diligently and in good faith during the transaction, a fact which, combined with the documents adduced and the machines themselves, demonstrates that the transaction carried out was genuine. The applicant submits that the invoices meet the aforementioned legislative requirements and it uses the products purchased for the needs of its taxed transactions, so that all the conditions governing the right to deduct are satisfied. The applicant cites the provisions of Directive 2006/112 and the case-law of the Court of Justice, and emphasises that the defendant wrongly inferred the applicant's liability from economic transactions that took place between persons external to the applicant, notwithstanding the diligent conduct of the applicant and its good faith, both of which have been established. The applicant regards as contrary to the case-law of the Court of Justice the tax authority's practice of penalising all taxpayers in a chain for the supply of goods or services for an irregularity committed by any one of the participants in that chain, a practice which denies the applicant its right to deduct and is based, ultimately, on the principle of strict liability.

11 The applicant criticises the fact that the defendant, in addition to wrongly denying it its right to deduct, imposed a punitive tax penalty equal to a factor of 200% on it without grounds and in a manner contrary to law, inasmuch as it has not shown that the tax debt was linked to the concealment of income or the falsification or destruction of supporting documents, accounting ledgers or registers.

12 The defendant contends that the action should be dismissed and maintains the findings in its decision. It does not deny that the applicant was in possession of an invoice compliant with formal requirements, but it does maintain that the economic transaction recorded on the invoice did not take place, since the declarations made by the company immediately upstream of that which issued the invoice and those of the company one place further upstream were contradictory. The defendant argues that the tax authority always expects taxable persons to act with due diligence and that, if, at the time of performance, it turns out that the taxable person does not know who the supplier was, that taxable person must do everything necessary to ensure that whoever issues the invoice performs the service and that it does not accept the service from anyone else, since the taxable person may legitimately assert his right to deduct VAT only if the delivery note and the declarations of the parties are consistent.

Brief presentation of the grounds of the request for a preliminary ruling

13 In its judgments in two earlier sets of proceedings, the Budapest Administrative and Labour Court amended the defendant's decisions to the extent that they had

been challenged by legal action, annulling the tax difference as well as the tax penalty and late-payment surcharge based on it.

14 That court, taking as its basis the provisions of Directive 2006/112 relating to the deduction of VAT, held that for the purposes of the right to deduct VAT, in those proceedings, it was relevant that the applicant had attached the invoices forming the subject matter of the inspection, as well as the documents substantiating that the invoices had been issued and complied with. That court also held that the fact that the machines had been delivered was not in issue.

15 On the basis of the case-law of the Court of Justice, the Budapest Administrative and Labour Court took the view that the defendant had extended the inspection to irrelevant facts and had arrived at the erroneous conclusion that the economic transaction between the applicant and Freest Kft. was fictitious. Given that the applicant was not party to the contracts under which the machines mentioned on the invoices were purchased, it could not be held liable for their purchase and supply. That court pointed out that evidence gathering must be objective and that, in that connection, the fact that the directors of those companies had recalled after a number of years [facts] formally supported by appropriate documents cannot be regarded as an objective circumstance that meets the requirements laid down by the Court of Justice in respect of such evidence. The tax authority acted in a manner contrary to law in not taking into consideration documents and other facts which show that the economic transaction took place, and its disregard for the importance of the fact that the machines were located at the applicant's business premises was particularly serious. For that reason, the tax authority had erred in concluding that the economic transaction related to the machines mentioned on the invoice had not taken place and that the content of the invoices was not credible, and also in wrongly refusing the applicant, as a result of the foregoing, the right to deduct VAT. That court also stated that the defendant had further failed to indicate the economic transaction in which the applicant had taken part with a view to evading the tax, thus infringing the provisions of the Law on VAT and of Directive 2006/112 relating to the conditions governing the right to deduct.

16 As regards whether the articles from the Law on accounting may be applied in the present case, the referring court stated — on the basis of the ruling given by the Court of Justice in the case that gave rise to the order of 10 November 2016 in *Signum Alfa Sped* (C-446/15, [not published,] EU:C:2016:869) — that, when viewed in the light of the articles cited from the Law on accounting, the implausibility of the content of the invoices was of no relevance for the purposes of the right to deduct VAT.

17 The Kúria (Supreme Court, Hungary), in two decisions, set aside the judgments of the court of first instance and ordered that court to initiate new proceedings and give new decisions.

18 The Supreme Court, acting on the basis of previous judgments relating to transactional chains, stated that the defendant should have carried out an

examination encompassing the entirety of the chain in order to determine whether the content of each of the contracts was founded in fact and whether there was any intention to evade payment of tax. In the case of a chain transaction, the tax authority is not only entitled but also obliged to carry out an examination of both the taxable person under inspection and also the other participants in the chain. For the purposes of the review of legality conducted by the court, therefore, the transaction in question cannot be viewed in isolation from the chain of economic transactions, the aforementioned judgments of the Court of Justice having also assessed the position of the person exercising the right to deduct in the context of the chain as a whole.

19 The Supreme Court considers that, in order to be able to exercise the right to deduct VAT, the existence of an invoice that meets the formal requirements is not sufficient, since it is also necessary that there should be an actual economic transaction. In order to assess the presence of an actual economic transaction, for the purposes of exercising the right to deduct VAT, the principle of reality over appearance established in Article 15(3) of the Law on Accounting serves as a benchmark. The objective circumstances that must be examined, according to the findings of the Court of Justice in its judgments, must be confined to those factors that can be regarded as actually present, demonstrable and determinable by third parties. Otherwise, the mere issuance of each of the invoices would in itself generate the possibility of deducting VAT. The Supreme Court emphasised, on the basis of the findings in paragraphs 43 and 44 of the order of 10 November 2016, *Signum Alfa Sped* (C-446/15, [not published,] EU:C:2016:869), that that order did not introduce any changes to the procedure to be followed with respect to exercise of the right to deduct based on economic transactions which have taken place.

20 It is apparent from the decisions under review that, in the on-site inspection carried out by the tax authority as part of the fiscal administrative proceedings, that authority, despite the fact, established and attested by an official document, that the applicant had put into operation in its establishment the machines referred to on the invoices and that those machines are still in operation on the self-same premises now, found that the formally unimpeachable invoice presented by the applicant and the other documents did not prove that that the economic transaction mentioned on its invoices had taken place. Furthermore, as regards the measures that the applicant could reasonably have been expected to take, the defendant did not consider that the steps taken by the applicant in order to satisfy itself that that the undertaking in question was active were sufficient, those steps having consisted in examining the extract from the commercial register relating to the other party to the transaction and asking that undertaking for its specimen signature prior to concluding the contract; on the contrary, the defendant expressed the view that the applicant should have taken all the steps necessary to assure itself that the other contracting party would carry out the supply in accordance with the defendant’s requirements, as the exercise of the right to deduct VAT would otherwise be unlawful.

21 Having regard to the foregoing, the subject of the present case is the interpretation of the provisions of Directive 2006/112 relating to the deduction of VAT in conjunction with the principles of fiscal neutrality and effectiveness. In that regard, the Court of Justice has interpreted both the aforementioned articles of Directive 2006/112 and the guiding principles of the system of VAT in many judgments and from different points of view; as regards the exercise of the right to deduct VAT, there nonetheless remain, even after those judgments, significant contradictions in legal interpretation which appear to confirm that the practice employed by the Member State in question, which continues unchanged as regards the way in which the national tax authority and courts apply those articles of the Directive, is still inconsistent with the *acte clair* doctrine established in the case giving rise to the judgment of the Court of Justice of 6 October 1982, *CILFIT and Others* (283/81, EU:C:1982:335).

22 Although the facts of the present case are, from the point of view of the relevant factual considerations, the same as those that formed the basis of the requests for a preliminary ruling in the cases giving rise to the judgment of 21 June 2012, *Mahagében and Dávid* (C-80/11 and C-142/11, EU:C:2012:373) and the orders of 16 May 2013, *Hardimpex* (C-444/12, not published, EU:C:2013:318) and of 10 November 2016, *Signum Alfa Sped* (C-446/15, [not published,] EU:C:2016:869), the tax authority, contrary to the decisions given by the Court of Justice in those cases, continues to refuse taxable persons the right to deduct VAT, on the basis of the implausibility of the content of their invoices, and to infer automatically from that circumstance the existence of tax evasion, a state of affairs which the taxable person seeking to exercise his right to deduct tax should necessarily have known and did in fact know by virtue of having accepted the implausible invoice.

23 The problem of legal interpretation raised in the present case has an indisputable bearing on the decision as to the substance of the case, since the conflicting substantive decisions given both by the courts hearing the case and the tax authority were based on the provisions of Directive 2006/112 and on the findings in the EU decisions given in connection with Hungarian cases concerning the basis for interpreting those provisions. Consequently, the questions raised are relevant to the decision to be given in this case and the referring court considers it necessary to make a request for a preliminary ruling.

24 Given that, notwithstanding the opposing positions, the Supreme Court did not consider it necessary to make a request for a preliminary ruling, that duty falls to the first-instance court. In case of doubt, the first-instance court may be relieved of its obligation to institute new proceedings only if the Court of Justice expressly rules on the present case. It is for this reason that, in its current formation, the first-instance court, despite having made a request for a preliminary ruling in another case in which it raised similar questions based on similar matters of fact, and, in that context, stayed various sets of pending proceedings, cannot order the stay of the present proceedings, pursuant to Article 275(5) of the Law of Civil

Procedure, but is obliged to make a separate request for a preliminary ruling to the Court of Justice.

25 Despite the rulings given in the aforementioned judgments and orders of the Court of Justice, the question arises yet again of whether or not the interpretative practice which the tax authority and the Supreme Court set out in the opinion issued and in the decisions they have given is contrary to the purpose of the right to deduct VAT provided for in Article 168(a) of Directive 2006/112, which forms an integral part of the VAT mechanism and, as a general rule, cannot be restricted; the question further arises of whether that interpretation is consistent with the requirements laid down in Article 178(a) of that directive in connection with the deduction of VAT and complies with the principles of fiscal neutrality and effectiveness.

26 Since the matters of fact relevant to the exercise of the right to deduct, which are set out in paragraphs 43 and 44 of the judgment of 21 June 2012, *Mahagében and Dávid* (C-80/11 and C-142/11, EU:C:2012:373), are present in this case, all the material and formal conditions for the creation and exercise of the right to deduct are fulfilled. What is more, there was nothing in the decision[s] to indicate that the applicant filed false returns or issued improper invoices.

27 According to paragraph 45 of the judgment of 21 June 2012, *Mahagében and Dávid* (C-80/11 and C-142/11, EU:C:2012:373), the right to deduct can be refused, in the context described above, only where the tax authority demonstrates, by means of objective factors, that the taxable person knew or should have known that the transaction in question was connected with fraud committed by the supplier or another, earlier trader.

28 Notwithstanding the foregoing, it is apparent from the decisions that the tax authority, acting on the basis of both the principle of reality over appearance, laid down in the Law on VAT and the Law on Accounting, and the specific requirements relating to supporting documents, refused the applicant the right to deduct VAT on the basis of facts which the Court of Justice, in its case-law, has specifically held to have no bearing on the taxable person's right to deduct input VAT, because they cannot be regarded as objective circumstances, and that it did so without providing a well-founded explanation of how the tax evasion in relation to the measures that the taxable person could reasonably have been expected to take was committed.

29 The referring court asks for clarification as to whether the national practice of attaching additional conditions to the exercise of the right to deduct VAT, over and above the information that must compulsorily appear on the invoice, in the form of the expression 'that demonstrates that the transaction took place', contained in Article 127(1) of the Law on VAT, together with the incorporation of the rules of the Law on Accounting into the taxable event, and together also with the criterion to the effect that a formally correct invoice is not in itself sufficient to enable a taxable person to exercise the right to deduct VAT, inasmuch as that

person must also be in possession of other documents in addition to the invoice, can be regarded as an extension, contrary to Directive 2006/112, of the substantive conditions, listed in Article 226 of that directive, which the invoices referred to in Article 220(1) of that directive must meet and upon which the deduction of VAT is contingent.

30 The referring court notes that, in the present case, the reason that there are divergent decisions lies not only in a different interpretation of EU law but also in an inconsistent assessment of the relevance of the evidential documents and the objective facts which those documents are intended to prove, it being incumbent on the national authorities and courts to carry out that assessment in accordance with the procedural rules of national law.

31 According to the settled case-law of the Court of Justice, in the absence of EU rules on the procedural aspects of exercising the right to deduct VAT, it is for the national legal order of each Member State to establish them in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgment of the Court of Justice of 7 June 2007, *van der Weerd and Others*, C-222/05 to C-225/05, EU:C:2007:318, paragraph 28).

32 According to the referring court, the assessment of evidential material is linked to EU law from various points of view. First, the rules of EU law must not be disregarded when it comes to assessing the relevant facts and evidential material, since those rules define the factors material to the examination of the right to deduct VAT. Secondly, the national case-law created on the basis of national rules of procedure must be consistent with the principles established by EU law and by the case-law of the Court of Justice founded on that law, such as the principles of fiscal neutrality, proportionality and effectiveness; according to those principles, the assessment of evidential material carried out by the national authorities and courts and the consideration of circumstances not relevant to that assessment must not go so far as to make it excessively difficult or impossible in practice to exercise the rights recognised by EU law. In that context, the referring court considers that, in order to carry out an assessment of evidential material that is compliant with EU law, it is necessary to set out guidelines to define the sphere of facts that may be taken into consideration and to assist with determining which material is relevant and which is not.

33 In the light of the case-law of the Court of Justice on the rules governing VAT, the referring court expresses doubts as to whether the breadth and depth required by the Supreme Court and the tax authority in relation to evidential material are compatible with the principles of fiscal neutrality, effectiveness and proportionality.

34 The referring court voices its concern about the fact that, in the case of a chain transaction, the main thrust of the inspection carried out by the tax authority and the focus of the measures that the taxable person can reasonably be expected to take must be a reconstruction of each of the constituent elements of the economic activities carried out by the members of the chain. It also expresses concern that, following the order of the Court of Justice of 10 November 2016, *Signum Alfa Sped* (C-446/15, [not published,] EU:C:2016:869), that inspection is invariably and crucially extended to an examination of constituent elements of the economic transaction, with the tax authority automatically drawing the conclusion from any error in those constituent elements that the taxable person was aware that he was taking part in tax evasion. The nexus between the economic transaction and the awareness of tax evasion is established, in part, by the same objective circumstances as those already referred to by the tax authority in the context of its assessment of the economic transaction and which the Court of Justice has said cannot form the basis for [refusing] the benefit of VAT deduction.

35 In all the questions it raises, the referring court asks whether the breadth, depth and scope of proof which the tax authority requires as a condition of exercising the right to deduct VAT and which the Supreme Court considers lawful — account also being taken of the principle of fiscal neutrality — encompasses the relevant facts and are necessary and proportionate, that is to say, they do not exceed the framework laid down in the judgments of the Court of Justice, in particular given that the tax authority criticises the applicant for furnishing insufficient proof in the tax proceedings and, in addition to refusing it the right to deduct VAT, imposes a tax penalty on it.

36 The referring court considers that, notwithstanding the fact that the checks referred to in paragraph 61 of the judgment of 21 June 2012, *Mahagében and Dávid* (C-80/11 and C-142/11, EU:C:2012:373) are not the norm and the taxable person can be required to carry them out only where the circumstances so warrant, in the present case, the tax authority nonetheless does not explain which circumstances compel applicant to carry out a more detailed check, inasmuch as the only ground on which that authority relied as against the applicant was the circumstance — which is a basic feature of trade — that the transaction in question was a chain transaction and imposed on the applicant the requirement (failure to comply with which would trigger a refusal of the right to deduct VAT), that, in order to demonstrate its good faith, it must have conducted checks which exceeded, in every respect, those referred to in paragraph 61 of the judgment of 21 June 2012, *Mahagében and Dávid* (C-80/11 and C-142/11, EU:C:2012:373).

37 Consequently, given that the tax authority still seeks to justify its refusal of the right to deduct VAT without relying on objective facts reasonably and directly related to the economic transaction, the referring court considers that that authority not only transfers its own duty of verification to taxable persons, contrary to the aforementioned provisions of Directive 2006/112 and the case-law of the Court of Justice, but also, by that practice, infringes the principles of fiscal neutrality, proportionality and effectiveness.

38 A legal practice based on considerations that run counter to the findings in the order of the Court of Justice of 10 November 2016, *Signum Alfa Sped* (C-446/15, [not published,] EU:C:2016:869), with no examination of the individual criteria mentioned in the Law on VAT and in the judgments of the Court of Justice (whether the taxable person knew or with reasonably expectable diligence should have known [of any impropriety]), renders nugatory the right to deduct VAT provided for in Articles 168 and 178(a) of Directive 2006/112 and in the judgments of the Court of Justice, in particular in Hungarian cases.

39 By the fifth question, the referring court seeks clarification as to whether the principle of proportionality must be interpreted as meaning that, if the right to deduct VAT is refused, it is proportionate to impose a tax penalty equal to 200% of the tax difference corresponding to the amount of VAT deducted, in circumstances where the applicant made available to the tax authority all the documents in its possession and given that, according to the Court of Justice, the fact that the persons upstream of the taxable person in the chain do not pay any VAT is irrelevant from the point of view of refusing the right to deduct VAT: the tax authority has not, therefore, sustained any loss of revenue in connection with the refusal of the right to deduct VAT, since the applicant and those forming part of the chain have, on the contrary, paid or declared the VAT payable on the transaction carried out within that chain, with the tax authority having considered that, in the applicant's case, the payment or declaration was legitimate inasmuch as the invoice was issued.

40 By the final question — raised in the event that, taking into account the differences of interpretation and practice between the courts, the interpretation and practice followed in the Member State in question may not be consistent with the provisions on VAT — the referring court seeks guidance as to whether taxable persons have the benefit of an effective remedy and whether that remedy is sufficient, taking into consideration Article 99 of the Rules of Procedure of the Court of Justice and in the light also of the fact that, notwithstanding the obligation to make a request for a preliminary ruling to the Court of Justice, a preliminary ruling cannot be sought from the Court in all cases.