

Case C-164/24

Request for a preliminary ruling

Date lodged:

1 March 2024

Referring court:

Administrativen sad Veliko Tarnovo (Bulgaria)

Date of the decision to refer:

20 February 2024

Applicant in the administrative proceedings:

‘Cityland’ EOOD

Defendant:

Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Veliko Tarnovo

ORDER

[...]

City of Veliko Tarnovo

Administrativen sad – Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria) [...]

following examination of administrative procedure No 815/2023 [...]:

The administrative procedure was initiated by an appeal brought by ‘Cityland’ EOOD [...] against deregistration decision under the Zakon za danak varhu dobavenata stoynost (Law on value added tax; ‘the ZDDS’) No 040992203779246/27.09.2022, issued by the tax authority of the Teritorialna direktsia na Natsionalnata agentsia za prihodite Veliko Tarnovo (National Revenue Agency, Veliko Tarnovo Directorate), confirmed by decision No 120/19.12.2022 of the Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ Veliko Tarnovo (Director of the Appeals and Tax and Social Security Practice Directorate, Veliko Tarnovo). That deregistration

decision terminated the company's registration under the ZDDS. With regard to the ruling on the merits in the pending dispute, the court finds that the proper resolution of the dispute requires a binding interpretation of provisions of EU law, for which the court considers it necessary to make a reference for a preliminary ruling to the Court of Justice of the European Union of its own motion pursuant to the third paragraph of Article 267 of the Treaty on the Functioning of the European Union.

I. Parties to the case

1. Applicant – 'Cityland' EOOD [...],
2. Defendant – Director of the Appeals and Tax and Social Security Practice Directorate, Veliko Tarnovo.

II. Subject matter of the proceedings

Deregistration decision under the ZDDS No 040992203779246/27.09.2022, issued by the revenue authority of the National Revenue Agency, Veliko Tarnovo Directorate, which terminated the company's registration under the ZDDS.

III. Facts of the case

III.1. 'Cityland' EOOD was a company active in the construction sector until 2019.

III.2. The company was audited in 2022 and, after examining the documents submitted and the tax and social security account of the taxable person, the revenue authority found a systematic failure to fulfil obligations under the ZDDS, consisting in non-payment of declared VAT for a total of five tax periods between the dates of 1 September 2013 and 30 June 2018.

III.3. That was indicated as the reason for the termination of the registration under the ZDDS, pursuant to Article 176(3) of the ZDDS, and the contested deregistration decision was issued.

III.4. The decision of the Director of the Appeals and Tax and Social Security Practice Directorate, Veliko Tarnovom indicates that the outstanding VAT debts amounted to BGN 4 144.59 for the tax period of September 2013, BGN 0.46 for that of May 2017, BGN 365.50 for that of March 2018, BGN 49.66 for that of April 2018 and BGN 27 506.73 for that of June 2018. The company claims that the declared and unpaid tax arises from invoices issued to 'Terem – Ivaylo' EOOD which have not been settled and in respect of which legal proceedings are pending. Following an objection made by the company, the competent authority collected further evidence and found that the VAT debts had been paid on 27 October 2022, with interest amounting to BGN 6 264.02 being payable.

IV. Relevant legal provisions

National law

The applicable law is the ZDDS.

Article 89 of the ZDDS makes the following provision: ‘[(1)] (amended – DV No 105 of 2014, in force since 1 January 2015) Where assessment results in an amount of tax due for the tax period, the registered person is required to pay the tax within the time limit for submission of the return for that tax period to the account of the competent local directorate of the National Revenue Agency.

(3) ([...] DV No 98 of 2018, in force since 1 January 2019) The tax shall be deemed to have been paid on the date on which the amount was entered in the account referred to in paragraph 1 above.’

Article 106 of the ZDDS makes the following provision: ‘(1) Termination of registration (deregistration) under this Law is a procedure whereby a person, after the date of deregistration, is no longer entitled to charge or to deduct VAT, save where this Law provides otherwise.

(2) Registration shall be terminated:

1. on the initiative of the registered person, where there is a ground for mandatory or voluntary deregistration;
2. on the initiative of the revenue authority, provided that:
 - (a) it has found that there is a ground for mandatory deregistration;
 - (b) one of the circumstances referred to in Article 176 is present.’

Article 125 of the ZDDS makes the following provision: ‘(1) (amended – DV No 105 of 2014, in force since 1 January 2015, [amended – DV] No 14 of 2022, in force since 18 February 2022) For each tax period, the person registered in accordance with Articles 96, 97, 97a, 99 and 100(1) and (2) shall submit a tax return drawn up on the basis of the accounting documents referred to in Article 124.

(4) The return referred to in paragraph 1 shall be submitted even if no tax is payable or refundable as well as in cases in which the registered person has not provided or received any supplies or acquisitions or carried out any imports for that tax period.

(5) The returns referred to in paragraphs 1 and 2 and the accounting documents referred to in paragraph 3 must be lodged by the 14th day of the month following the tax period to which they relate.’

Article 176 of the ZDDS makes the following provision: ‘A revenue authority may refuse to register or may terminate the registration of a person who:

[...]

3. systematically fails to comply with his or her obligations under this Law;

[...]

Article 1(1) of the Zakon za lihvite varhu danatsi, taksi i drugi podobni darzhavni vzemania (Law on interest chargeable on taxes, fees and other similar State receivables) makes the following provision: ‘Taxes, fees, deductions from profits, contributions to the budget and other State receivables of a similar nature which have not been paid within the period prescribed for voluntary payment, have not been withheld or have been withheld but not paid on time are to be recovered subject to interest at the statutory rate.’

Article 209 of the Danachno-osiguritelnii protsesualen kodeks (Tax and Social Security Code of Procedure) makes the following provision: ‘The enforcement of recovery of public debts is authorised on the basis of the legal act which establishes the debt and which is provided for by the relevant law.

(2) Enforcement shall be effected on the basis of:

1. a notice of assessment, irrespective of whether it is under appeal;
2. a declaration to be submitted by the taxable person indicating his or her self-assessed tax liability or liability for compulsory social security contributions;

[...]

EU law

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

Under Article 203 of Directive 2006/112 [...], VAT is payable by any person who enters the VAT on an invoice.

Under Article 206 of Directive 2006/112 [...], any taxable person liable for payment of VAT must pay the net amount of the VAT when submitting the VAT return provided for in Article 250 of that directive. Member States may, however, set a different date for payment of that amount or may require interim payments to be made.

Under Article 213(1) of Directive 2006/112 [...], every taxable person is to state when his activity as a taxable person commences, changes or ceases.

Under Article 273 of Directive 2006/112 [...], Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

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

Case-law

As regards the possibility envisaged by the ZDDS of an ex officio termination of the registration of taxable persons who systematically fail to comply with their obligations under that law, the relevant case-law does not call into question the applicability of that provision and examines in each individual case whether the conditions for it are satisfied. The nature of the offences and the time of their commission do not constitute a ground for annulling decisions of the administration.

The referring court is not aware of any case-law of the Court of Justice interpreting Article 213(1) and Article 273 of Directive 2006/112 [...] as regards ex officio deregistration under the ZDDS of taxable persons.

VI. Main arguments of the parties

Both parties put forward arguments relating to the existence of systematic infringements – more than three – of Article 89(1) of the ZDDS consisting in non-payment of declared VAT.

VII. Grounds on which the reference is requested

Given that Directive 2006/112 [...] does not provide for a possibility of excluding taxable persons from the VAT system, even as a measure to combat fraud, the first question which the present Chamber is unable to answer is whether such a possibility is contrary to EU law.

The fact that the revenue authorities took steps to deregister the company more than four years after the last infringement raises the questions of what impact that measure has and whether there should be time limits as well as restrictions associated with the nature of the offences committed by the taxable persons. The applicable rules do not require a full examination of the conduct of a taxable person in order to conclude that he or she is jeopardising tax revenue and that there is a suspicion of his or her participation in tax fraud. Three formal

infringements of the VAT rules, including late submission of a tax return, late payment of the tax due, late issue of an invoice, etc., are sufficient for the person concerned to be excluded from the VAT system. It is apparent from the case file that the systematic nature of the offences was examined over a lengthy period of almost 10 years, the first infringement dating from 2013, and that even insignificant amounts were taken into account in the assessment of the systematic nature of the offence (unpaid VAT for 2017, for example, amounted to BGN 0.46). In the view of the present Chamber, it is therefore for the Court of Justice, which is responsible for interpretation, to clarify whether the lack of individualisation of the acts which constituted grounds for deregistration is consistent with the pursued objective of combating tax fraud and is consistent with the principles of legal certainty and proportionality.

In the view of the referring court, there is also a need to answer the question whether the deregistration measure is proportionate to the offence committed in the case of failure to pay declared VAT within the statutory time limit, given that the taxable person is liable to pay statutory interest in the event of late payment.

In the light of these considerations, the Administrative Court, Veliko Tarnovo [...] has

ORDERED AS FOLLOWS:

The following questions are REFERRED to the Court of Justice of the European Union for a preliminary ruling under subparagraph (b) of the first paragraph of Article 267 of the Treaty on the Functioning of the European Union:

1. Are Article 106(2)(2)(b) and Article 176(3) of the *Zakon za danak varhu dobavenata stoinost* (Law on value added tax) contrary to Article 213(1) of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax?
2. If the first question is answered in the affirmative, does Article 213(1) of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax have direct effect?
3. If the first question is answered in the negative, do Article 213(1) and Article 273 of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax, as well as the principles of legal certainty and proportionality, permit exclusion from the VAT system in the event of formal infringements of the law, without account being taken of the time of commission of the offence, the type of offence, the other conduct of the person and the existence of other subjective circumstances, such as commercial litigation for failure to pay the tax due on time?
4. If the first question is answered in the negative, do Article 213(1) and Article 273 of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax and the principle of proportionality

permit exclusion from the VAT system at the same time as the imposition of interest for failure to pay declared tax on time, without the revenue authority being required to analyse the type and nature of the company's activity, its conduct as a taxable person and the severity of each of the proposed measures?

[...]

WORKING DOCUMENT