Case C-527/23

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:

16 August 2023

Referring court:

Tribunalul Prahova (Romania)

Date of the decision to refer:

30 December 2022

Applicant:

Weatherford Atlas Gip SA

Defendants:

Agenția Națională de Administrare Fiscală – Direcția Generală de Soluționare a Contestațiilor

Agenția Națională de Administrare Fiscală – Direcția Generală de Administrare a Marilor Contribuabili

---

Subject matter of the main proceedings

Action for partial annulment of the decision ruling on the administrative complaint lodged by Weatherford Atlas Gip SA, in so far as it dismisses the claim in the amount of 1 774 410 Romanian lei (RON) in respect of VAT, and annulment of the tax assessment notice concerning the main tax liabilities relating to the differences in the bases of assessment established in the context of the tax inspection of legal persons. The action also seeks a declaration that the tax inspection report on the basis of which the tax assessment notice was issued is unlawful and an order that the VAT paid by the applicant be refunded.

Subject matter and legal basis of the request

Pursuant to Article 267 TFEU, the interpretation of Articles 2 and 168 of Directive 2006/112 is sought.

Questions referred for a preliminary ruling

(1) Must Article 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of the principle of fiscal neutrality, be interpreted as precluding, in circumstances such as those in the main proceedings, the tax authority from refusing a taxable person the right to deduct the value added tax paid in respect of administrative services acquired, where it is established that all the costs recorded for the services purchased have been included in the taxable person's general costs and that the taxable person carries out only taxable transactions, that the supply of services is expressly confirmed by the tax authority and that the tax treatment applied is that of the reverse charge procedure (which precludes a loss to the Treasury)?

(2) For the purposes of interpreting the provisions of Articles 2 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in circumstances such as those in the main proceedings, may the services of management and administration (namely assistance and consultancy in various fields, financial and legal advice) provided between intra-group companies for the benefit of different members of the group be regarded by each member in part as being used for the purposes of taxable transactions, that is to say, acquired for its own purposes?

(3) For the purposes of interpreting Article 2 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, where it is established that intra-group services are not supplied to a member of the group, may a company which is part of the group but is deemed not to have benefited from such services be regarded as a taxable person acting as such?

Provisions of European Union law and case-law cited

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the 'VAT Directive'): Articles 2(1), 9(1), 168, 178, 203 and 273

Article 5(4) of the Treaty on European Union

Article 5 of Protocol (No 2) to the Treaty on European Union on the application of the principles of subsidiarity and proportionality

Cases: *Midland Bank*, C-98/98; *Abbey National*, C-408/98; *Klub*, C-153/11; *Kretztechnik*, C-465/03; *SKF*, C-29/08; *Investrand*, C-435/05

Provisions of national law cited

Legea nr. 227/2015 privind Codul fiscal (Law No 227/2015 establishing the Tax Code), Article 3(a), which lays down the following taxation principle: 'the neutrality of tax measures with regard to the different categories of investors and

capital, ownership, which ensures an equal level of taxation for investors, Romanian capital and foreign capital'

Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Tax Code), Article 126(1) [which lays down the cumulative conditions for taxable transactions and which, under point (a), provides for 'transactions which, pursuant to Articles 128 to 130, constitute or are treated as a supply of goods or services, which are subject to tax, effected for consideration']; Article 145(2) [which provides for the right of a taxable person to deduct tax on purchases if they are made for the purposes of certain transactions, including, under point (a), 'taxable transactions'); Article 146(1) [laying down the conditions for exercising the right to deduct]; Article 150(1) and (2)

Normele metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal, aprobate prin Hotărârea nr. 44/2004 a Guvernului (Methodological rules for implementing Law No 571/2003 establishing the Tax Code, approved by Government Decision No 44/2004):

– point 2, paragraph (2), in conjunction with Article 126 of the 2003 Tax Code:

'Pursuant to Article 126(1)(a) of the Tax Code, a supply of goods and/or services must be made for consideration. The 'consideration' condition implies the existence of a direct link between the transaction and the consideration obtained. A transaction is taxable where it confers a benefit on the customer and the consideration obtained is linked to the benefit received, as follows:

(a) the condition relating to the existence of a benefit for a customer is met where the supplier of goods or services undertakes to provide specific goods and/or services to the person making the payment or, failing payment, where the transaction has been made to enable such an undertaking to be entered into. That condition is consistent with services being collective, not admitting of precise measurement or being attributable to a legal obligation; (…)'.

– point 41, in conjunction with Article 11, of the 2003 Tax Code:

'In the case of intra-group administration and management services, the following shall be taken into account:

(a) between the affiliated persons, administrative, management, control, consultancy or other similar functions are deducted centrally or regionally through the parent company, on behalf of the entire group. No remuneration may be claimed for such activities, as their legal basis is the legal relationship that governs the form of business organisation or any other provision establishing the links between the entities. Such charges may be deducted only if those entities also provide services to the affiliates or if the price of the goods and the amount of the fees for the services provided also take into account the services or administrative costs. Such costs cannot be deducted by a subsidiary that uses those services on the strength of the legal relationship between them, exclusively under its own

conditions, because it would not have used those services if it had been an independent person;

(b) the services must be actually provided. The mere existence of intra-group services is not sufficient, since, as a general rule, independent persons pay only for services actually provided. (…)'.

Succinct presentation of the facts and procedure in the main proceedings

1 The applicant, Weatherford Atlas Gip SA, has more than 50 years' experience in providing coring, drilling and extraction services in the oil industry and geological and directional drilling services in Romania. The company is part of the Weatherford group (the 'Group'), which is a group of companies offering a wide range of oil services worldwide: drilling, appraisal, well construction, intervention, abandonment, and so forth.

2 By means of a merger by acquisition, the applicant took over Foserco SA, a member of the Group, the business of which consisted of services ancillary to the extraction of oil and natural gas, including prospecting.

3 Following the merger by acquisition, the tax authorities carried out an inspection of the tax liabilities relating to income tax and VAT payable by Foserco SA and issued the decision to review those liabilities. During the period covered by the review, Foserco SA supplied drilling services to two customers. For the provision of those services, Foserco SA used general administrative services provided by companies in the Group, namely services relating to IT, human resources, marketing, optimisation of financial and accounting processes, finance and accounting, environmental protection, sales, and so forth.

4 Those services were provided by specialised sectors of certain companies in the Group to various Group members, including the applicant. Since the companies that supplied the services were companies established outside Romanian territory, the reverse charge tax treatment was applied to those transactions for VAT purposes.

5 Following the tax inspection, the inspection authorities issued the tax assessment notice and the tax inspection report, declaring that VAT relating to the services purchased could not be deducted because it had not been shown that those services had been supplied for the purposes of taxable transactions. The applicant appealed the notice and report, and the appeal was dismissed by decision of the tax authorities.

The essential arguments of the parties in the main proceedings

6 The **applicant** requested that the Tribunalul Prahova (Regional Court, Prahova, Romania) should refer questions regarding the interpretation of EU law to the Court of Justice.

7 As regards the first question, it submits that it is necessary to clarify the concept of the use of certain services for the purposes of taxable transactions, since the tax authorities have ruled that it is not entitled to deduct the VAT relating to those services. Those authorities do not dispute the actual provision of the services or their real existence and do not claim that there has been any tax fraud, since, in the present case, VAT was applied by means of the reverse charge mechanism, but they claim that the applicant has not demonstrated a link between the recorded supplies of services and its taxable transactions. In particular, given that the services purchased by the applicant are administrative services and that its employees corresponded with the service provider in relation to the services provided or participated in various training courses delivered by the service providers, the tax authorities' allegations concern the need to purchase those services: in other words, how they benefited the applicant and how they were used for its taxable activities.

8 The applicant argues that the case-law of the Court of Justice of the European Union has identified two rules that should be analysed in order to verify compliance with the requirement of services being purchased for the purposes of taxable transactions.

9 The first rule is that the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct is required, in principle, before the taxable person is entitled to deduct input VAT, and that such a link exists where the acquisition costs form part of the cost components of the output transactions. In that regard, the applicant refers to Case C-98/98, *Midland Bank*.

10 The second rule is that the taxable person is entitled to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the costs of the services in question are part of the taxable person's general costs. The applicant cites, in particular, the judgments in *Midland Bank* (C-98/98) and *Abbey National* (C-408/98), in which it was held that such costs are, as such, components of the price of the goods and services that it provides. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole.

11 The applicant also relies on the cases of *Investrand*, *SKF*, *Kretztechnik*, *BLP Group*, *Cibo Participationis* and *Securenta*, but that case-law concerns output economic transactions carried out by persons who were either exempt from VAT or outside the scope of VAT.

12 According to the information provided by the applicant, there is currently no Court of Justice judgment on the interpretation of EU law to determine whether there is a direct and immediate link between the purchase of services and the taxable transactions of taxpayers carrying out exclusively taxable activities in cases where the total cost of the services was included in the selling price of the goods produced or in the taxpayer's general costs.

13 As regards the second question, the applicant maintains that it is necessary for the EU judicature to clarify whether the right to deduct VAT may be refused on the basis of a subjective assessment by the tax authority as to the necessity and appropriateness of acquiring the services at issue, given that Article 168 of the VAT Directive does not provide that, for the purposes of deducting VAT relating to input purchases, proof must be provided that such purchases are necessary for the economic activity, but merely lays down the condition that the purchases must be for the purpose of using the goods and services purchased for the taxed transactions of the taxable person.

14 The services purchased by the applicant from the Group include, in addition to the consultancy provided to it directly, the drafting of procedures such as, for example, the procedure for invoicing customers electronically, the procedure relating to the management of employee services, and so forth, which were drawn up for several companies in the Group and were used by those companies, including the applicant company, with the cost of drafting and implementing the procedures being shared among the beneficiary companies.

15 The tax authorities took the view that it had not been proven that the services in question had been provided in connection with and for the benefit of the applicant, suggesting that, in fact, they should not have been invoiced to the applicant because other Group entities, or even the Group as such, had made use of them, and that therefore they constituted shareholder costs and, thus, were not necessary.

16 In the judgment of 26 April 2012, *Balkan and Sea Properties* and *Provadinvest*, C-621/10 and C-129/11, the Court of Justice held that the taxable amount for the supply of goods or services for consideration is the consideration actually received for them by the taxable person.

17 The applicant therefore believes that the Court of Justice should clarify whether, in addition to the condition regarding the use of the services for the taxable person's taxable transactions, Article 168 of the VAT Directive also imposes the requirement (whether distinct or included in the concept of 'use for the purposes of taxable transactions') that the services must be necessary for the taxable person and, above all, the criteria on the basis of which such an analysis may be carried out.

18 As regards the third question, the applicant states that this is based on the tax authorities' refusal of the right to deduct VAT for the services purchased by the applicant from the Group, on the ground that it did not provide proof that the

services were supplied for the purposes of its taxable transactions and for its benefit.

19 In that regard, it cites the judgment in *Serebryannay vek*, Case C-283/12, which held that the possibility of classifying a transaction as a transaction for consideration requires only that there be a direct link between the supply of goods or the provision of services and the consideration actually received by the taxable person.

20 If there is no link between the supply of services and the consideration received, the supply does not constitute a taxable transaction for VAT purposes. In that event, it is noted that if the service had not been supplied, it would not have existed, with the result that the transaction would no longer be taxable for VAT purposes.

21 In so far as the tax authorities dispute that the applicant is the recipient of the intra-group supply of services, the applicant believes that it is necessary for the Court of Justice to clarify whether it satisfies the conditions for being regarded as a taxable person liable to pay VAT, in the light of Article 9 et seq. of Title III of the VAT Directive.

22 The **defendants** have applied for a declaration that the request for a preliminary ruling addressed to the Court of Justice by the questions for a preliminary ruling referred by the applicant is inadmissible, on the ground that the applicant is in fact seeking to obtain from the Court a ruling giving guidance to the referring court on the specific outcome of the case. The defendants consider that it is for the national court before which the dispute has been brought to assess the facts at issue and to determine whether the Court's case-law on the right to deduct VAT is applicable to the present case.

Succinct presentation of the reasoning in the request for a preliminary ruling

23 Agreeing with the applicant, and disagreeing with the defendants' arguments in that regard, the referring court considers that it is necessary and useful to clarify the applicable EU law before judgment is given on the substance of the case, and fully endorses the applicant's arguments.

24 In assessing whether it is appropriate to refer those questions to the Court of Justice for a preliminary ruling, the referring court takes account of the fact that the rules of EU law referred to in Articles 2 and 168 of the VAT Directive, which are at issue here and the interpretation of which is sought, are of considerable relevance to the outcome of the case, in view of the fact that VAT is a tax derived from EU legislation and that the common system of VAT is based on a series of principles that are generally binding in the European Union.

25 In view of the impact and relevance in the present case of those provisions of EU law, the outcome of the present dispute is heavily dependent on their correct

interpretation by the Court of Justice, since the referring court must determine, on the basis of that interpretation, whether the approach of the tax authorities in the present case is consistent with the spirit of the EU legislation or, on the contrary, is incorrect.

26 In that context, the Tribunalul Prahova considers that this is not strictly a question of interpretation of domestic law and that it is necessary to clarify the interpretation of Directive 2006/112 in relation to the aspects set out above.

27 That being so, the Tribunalul Prahova considers that the conditions for admissibility are satisfied in the present case, since the answers to the questions formulated may provide clarity to the court and the parties on aspects relevant to the decision to be taken in this case, in which a new question of interpretation has been raised.