Case C-513/24

Request for a preliminary ruling

Date lodged:

23 July 2024

Referring court:

Nejvyšší správní soud (Czech Republic)

Date of the decision to refer:

15 July 2024

Appellant:

Oblastní nemocnice Kolín, a. s., nemocnice Středočeského kraje

Respondent:

Odvolací finanční ředitelství

ORDER

The Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) […] has ruled in an appeal brought by the appellant: **Oblastní nemocnice Kolín, a. s., nemocnice Středočeského kraje,** […] against the respondent, **Odvolací finanční ředitelství** (Appellate Financial Directorate) […], in respect of the respondent's decision of 25 February 2022, ref. no. 7145/22/5300-21441-711676, in proceedings concerning the appellant's appeal in cassation challenging the judgment of the Krajský soud v Praze (Regional Court, Prague, Czech Republic) of 8 February 2023, ref. no. 51 Af 5/2022-71,

As follows:

I. The following question is hereby **submitted** to the Court of Justice for a preliminary ruling:

Must Article 173(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax be interpreted as meaning that, where a transaction in respect of which VAT is deductible depends on the possession of a licence to carry out transactions in respect of which VAT is not deductible (in this case, health services), do the goods and the services

relating thereto, which constitute, under national legislation, the minimum technical and material equipment for healthcare facilities, on which the provision of healthcare services depends, correspond to general (overhead) costs directly and immediately linked to the overall economic activity of the taxable person, and hence, give rise to a right to deduct a proportion of the tax?

[…]

Grounds:

I. Subject of the proceedings

[1] The appellant is a hospital which, as part of its economic activity, provides primarily healthcare services in respect of which value added tax (‘‘the tax’) is deductible. In addition, it provides other services, in respect of which the tax is deductible (‘other services’). Those other services include, in particular, clinical studies of the effects of medications, accommodation for persons accompanying patients, additional services for hospitalised patients, internships for physicians, other professional staff, and students, administrative tasks (providing information to insurance companies, courts, or the police concerning the state of health or degree of disability of a person, excerpt from documentation, lending of documentation, copying or searching in files, looking up times of birth), sterilisation of instruments for third parties, storage of bodies for third parties, antenatal courses, X-rays, veterinary examinations, or ultrasound scans.

[2] On 18 January 2019, the appellant filed a supplementary tax return for December 2016, claiming a partial tax deduction (that is to say, a proportional deduction of the tax), amounting to a total of CZK 4 176 327. On 5 February 2021, the Tax Office for the Central Bohemian Region issued a tax adjustment notice, by which it partially recognised the appellant’s newly claimed tax deduction, in the amount of CZK 888 604. It concluded that the appellant failed to demonstrate that it was entitled to a tax deduction in the amount of CZK 3 287 723, as the services received corresponding to that amount were primarily intended for the provision of healthcare services and used for that purpose, that is to say, for transactions in respect of which VAT is not deductible. The appellant challenged the tax adjustment notice; the challenge was in part upheld by the respondent’s decision of 25 February 2022, recognising the applicant’s right to a deduction of a proportion of the tax, in the amount of CZK 2 710 125. With respect to the rest (that is to say, the amount of CZK 1 466 202), it found that the applicant failed to prove that it was entitled to a partial deduction of the tax.

[3] The appellant brought an action against the respondent before the Prague Regional Court, which dismissed it by the decision under appeal. It did not agree with the appellant that all material and technical equipment and the services that a hospital is required to purchase in order to ensure its operation and the provision

of all of its services constitute overhead costs. According to that court, overhead costs must be deemed to be solely those costs that ensure the regular operation of a hospital, which were, at least to some extent, actually incurred for the purpose of providing other services. In so far as concerns the appellant's claim seeking a deduction of a proportion of VAT on the purchase of a defibrillator, the Regional Court pointed out that there is no apparent link between that input transaction and other services. It reached the same conclusion in relation to the appellant's remaining claims for deduction of a proportion of VAT.

[4] The appellant lodged an appeal in cassation challenging the judgment of the Regional Court, maintaining that the goods and services at issue constitute its overhead costs. Hence, it is not necessary to document their direct and immediate link to transactions giving rise to a VAT deduction. It argues, in particular, that, in order for it to provide other services, it must hold a licence for the provision of healthcare services. In order for it to hold that licence, it must meet the minimum requirements as to the technical and material equipment for healthcare facilities set out in the vyhláška Ministerstva zdravotnictví č. 92/2012 Sb., o požadavcích na minimální technické a věcné vybavení zdravotnických zařízení a kontaktních pracovišť domácí péče (Regulation of the Ministry of Health No 92/2012, on minimum requirements for the technical and material equipment of healthcare facilities and home care contact points, 'Regulation No 92/2012'). Hence, the acquisition, repair, inspections, and servicing of that equipment are also required for the provision of other services. From that, the appellant infers that these are overhead costs that, by the nature of matter, pertain to its overall activity and which were not acquired exclusively for a specific purpose. As an example of such costs, it generally identifies repairs, servicing, technical and safety reviews or inspections of medical devices, giving the specific example of the acquisition of a Philips defibrillator for the intensive care unit of the internal medicine department, where, in addition to services for which tax is not deductible, other services are provided (for which the tax is deductible).

II. Applicable EU and national legislation

[5] Article 132(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('VAT Directive') stipulates:

> *'Member States shall exempt the following transactions:*
>
> […]
>
> *(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;*
>
> […].

[6] Article 168 of the VAT Directive stipulates:

> *'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:*
>
> *(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;*

continued

> […].'

[7] Article 173(1) of the VAT Directive stipulates:

> *'In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170, and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.*
>
> *The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.'*

[8] Pursuant to Paragraph 72(6) of zákon č. 235/2004 Sb., o dani z přidané hodnoty, ve znění účinném do 30. 6. 2017 (Law No 235/2004 on value added tax, in the version in force as from 30 June 2017, 'the VAT Law'):

> *'Where a taxpayer uses the taxable supply received both for purposes which give rise to the right to a tax deduction and for other purposes, he or she is entitled to claim a tax deduction only for the part attributable to the use which gives rise to a tax deduction ("partial deduction"), unless the law provides otherwise. The appropriate amount of the partial tax deduction shall be determined in accordance with the procedure laid down in Paragraphs 75 or 76.'*

[9] Pursuant to Paragraph 76(1) of the same Law:

> *'Where a taxpayer uses a taxable supply received in the course of its economic activities both for a supply eligible for a tax deduction, as listed in Paragraph 71(1), and for supplies exempt from tax, which are not eligible for a tax deduction, with the place of supply being the Czech Republic or outside of the Czech Republic, with the exception of supplies listed in Paragraph 72(1(d), he or she shall be entitled to a tax deduction of a*

reduced amount, corresponding to the scope of use for supplies with the right to a deduction.'

[10] The method of calculation of the deduction is set out in detail in Paragraph 76(2) to (10) of the same Law.

[11] Under Paragraph 1(1) of Regulation No 92/2012:

'The general requirements as to minimum technical and material equipment ('technical and material Equipment') of healthcare facilities are set out in Annex 1 to this Regulation.'

[12] Pursuant to Paragraph 1(2)(c) of that regulation, further requirements concerning the technical and material equipment of *inpatient* healthcare facilities *are set out in Annex 4 to the Regulation.*

[13] Annex 4 to that regulation, Part II, entitled *Specific Requirements*, in paragraphs 2. *Acute inpatient care*, *2.1 Adult intensive care* stipulates, inter alia, a defibrillator as required equipment for adult intensive care units.

[14] Furthermore, annexes to Regulation No 92/2012 feature hundreds of items of technical and material equipment of individual types of healthcare facilities and their departments. These include, e.g., operational premises (doctors' surgeries, waiting rooms, toilets for patients, storage premises), equipment for such premises (bed, washbasin, cabinet, chairs, desks), tools (such as a stethoscope and magnifying glass), simple devices (tonometer, scale, glucometer) as well as more complicated devices (ECG device, sonograph, laryngostroboscope, vital signs monitor).

III. Analysis of the request for a preliminary ruling

III.1 Subject matter of the dispute

[15] The subject matter of the dispute in the present case is the question whether the appellant is, in the provision of other services (for which the tax is deductible), automatically entitled to a deduction of a proportion of the tax on the acquired goods (and services related thereto), which constitute the minimum technical and material equipment for a healthcare facility under Regulation No 92/2012, and are required for the provision of healthcare services (for which the tax is not deductible), on the grounds that, without a licence to provide healthcare services, nor would not be able to provide those other services.

[16] The Supreme Administrative Court has doubts concerning the interpretation of Article 173(1) of the VAT Directive in relation to this question. It has, therefore, concluded that it is appropriate to refer a question to the Court of Justice for a preliminary ruling, for the reasons stated below.

III.2 The question referred for a preliminary ruling

[17] The Court of Justice has repeatedly held that the existence of a direct and immediate link between a particular input transaction and one or more output transactions giving rise to the right to deduct is, in principle, necessary before a right to deduct is recognised.. The right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them is part of the cost components of the taxable output transactions giving rise to the right to deduct (judgment in *Wolfram Becker*, C-104/12, EU:C:2013:99, paragraph 19).

[18] At the same time, however, the Court added that the right to a deduction is also granted in the event that there is no direct and immediate link between a particular input transaction and one or more output transactions giving rise to the right to deduct, where the costs of the services in question are part of the general costs of the taxpayer and are, as such, components of the price of the goods or services which he or she supplies. Such costs do, in effect, have a direct and immediate link with the taxable person's economic activity as a whole (judgments in *Wolfram Becker*, paragraph 20, *Kretztechnik*, C-465/03, EU:C:2005:320, paragraph 36, or *Volkswagen Financial Services (UK)*, C-153/17, EU:C:2018:845, paragraph 42).

[19] The above does not, however, mean that where individual input transactions cannot be 'matched' to specific output transactions, such input transactions always would need to be considered general (overhead) costs from which the taxable person is entitled to deduct a proportion of VAT. The Court of Justice has repeatedly emphasised that even general costs require a general and immediate link, not to specific output transactions, but rather, to the taxable person's economic activity as a whole (judgments in *Volkswagen Financial Services (UK)*, paragraphs 43 and 48, or *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraphs 32 to 38).

[20] The Court has further specified that the existence of such a link between transactions must be assessed in the light of the objective content of those transactions. Furthermore, account must be taken of the actual use of the goods and services purchased by the taxable person and of the exclusive reason for the transaction in question (judgment in *Finanzamt R (Deduction of VAT linked to a shareholder contribution)* C-98/21, EU:C:2022:645, paragraph 49).

[21] In the present case, it is questionable whether the appellant's costs linked to the acquisition and maintenance (repair, inspections, or servicing) of the minimum technical and material equipment of its healthcare facility constitute general (overhead) costs which are immediately and directly linked to its economic activity in general, and accordingly also to transactions in respect of which tax is deductible.

[22] An argument in favour of the conclusion that these are such general costs is the fact that the provision of another service is indirectly conditional on the expenditure of that cost (as in *Iberdrola Inmobiliaria Real Estate Investments*,

even though the factual situation was substantially different). This concerned mandatory equipment required by national legislation (Regulation No 92/2012). Without it, the appellant would not be entitled to provide healthcare services. Furthermore, without meeting statutory requirements for the provision of a healthcare service, the appellant would be unable to provide other services. An example of such a transaction specifically referred to by the appellant in the proceedings before the Supreme Administrative Court is a defibrillator, which constitutes mandatory equipment for the intensive care unit of the internal medicine department, using which the appellant also provided services in the form of clinical studies, for which the tax is deductible. In principle, there is no apparent link between the acquisition of a defibrillator and a clinical study. However, if the appellant did not have this minimum equipment, it would not be able to provide the service constituting a clinical study.

[23] An argument in favour of the conclusion that these may not be general costs relating to the appellant's overall economic activity is the fact that at least in respect of most items of minimum technical and material equipment, the purpose of Regulation No 92/2012 clearly was to guarantee the availability of healthcare services (and not all services provided by a healthcare facility) of a certain quality. An example of such an item is the defibrillator referred to by the appellant, which was acquired for the intensive care unit of the internal medicine department. The facts of the case do not indicate that the appellant acquired the device with the aim of subsequently providing other services in that department, in the form of a clinical study. Hence, if the appellant did not acquire the device directly for the purpose of providing clinical studies, the link between those transactions appears to be rather remote.

[24] It is evident from the contents of the administrative file that, in the intensive care unit of the internal medicine department, other services in respect of which the tax is deductible were to be provided. These included, for example, an internship provided by the appellant to a physician in training for a fee. Generally, it can be assumed that, in the context of his or her internship, a physician will provide healthcare services to patients under normal conditions, that is to say, including with the assistance of medical devices with which the department is equipped. On the one hand, this potential direct use of a device as part of an internship may appear to constitute a closer link between the input transaction and output transaction concerned. On the other hand, the price of the given input transaction is not reflected in the price of the internship but, rather, it is reflected in the price of the healthcare service for which the tax is not deductible. In this case, the hospital is providing two services at the same time: one to the patient and the other to the physician-intern. The link between the acquisition of the defibrillator and the provision of the internship service therefore seems excessively remote.

[25] Should the Court generally conclude that the link described in paragraph [22] between input transactions and output transactions for which the tax is deductible is not direct and immediate in the appellant's case, and that that link

should be assessed for each individual minimum technical and material equipment set by Regulation No 92/2012, the question arises concerning the other facts to be assessed by the national court.

[26] In its arguments, the appellant also refers to another example that is hypothetical, but which can, nevertheless, illustrate a situation when a direct and immediate link is not apparent either in respect of transactions on which the tax is deductible or in respect of transactions on which the tax is not deductible. Such an example is the acquisition of a defibrillator for the gynaecological outpatient clinic. In relation to that input transaction, the respondent's interpretation would, according to the appellant, lead to a different outcome for an entity that merely carries out transactions on which the tax is deductible (taxable healthcare services, such as in the form of an abortion at a patient's request, without a medical indication by a doctor), and for the appellant. The appellant would not be entitled to a tax deduction if it failed to demonstrate a direct and immediate link to transactions in respect of which the tax is deductible. By contrast, the entity in question would have such a right, because the cost would be, in its case, an overhead cost that it would be required to expend and that would, at the same time, have no relation to output transactions in respect of which the tax is not deductible, as it does not carry out any such transactions. The appellant uses that example as an argument to show that the acquisition of all minimum technical and material equipment should be deemed to constitute a general cost that gives rise to the right to a proportionate partial deduction of the tax. The Supreme Administrative Court, however, holds that this example may also constitute an argument in favour of the finding that the decisive factor should not be merely whether it is mandatory equipment required by legislation, but also whether that mandatory equipment is intended to be used regularly, and if so, for what types of services. It cannot be ruled out that the same equipment may be assessed differently for different healthcare providers. For one, it can be mandatory equipment that is not normally used (that is to say, acquired primarily in order to satisfy a legislative requirement or to be prepared for unexpected situations), whereas for another, it may be regularly used mandatory equipment (that is to say, acquired, in particular, with the aim of using it in providing healthcare services). In that case, the different treatment would be justified by the different situation of the individual taxable persons.

[27] In the light of the situation described above, the Supreme Administrative Court is of the opinion that the required degree of connection between general costs and the transactions in respect of which the tax is deductible can differ depending on the strength of the link to transactions in respect of which the tax is not deductible. In specific cases, that rule would make it possible to take into account whether, for the entity in question, it is mere mandatory equipment, the use of which is not envisaged for the provision of healthcare services, or, whether it is standard equipment, which is regularly used in the provision of healthcare services. In the former case, it is a matter of a general cost that is directly and immediately (albeit less intensively) related to all output transactions; while in the latter, it is a general cost directly and immediately linked solely to transactions on

which the tax is not deductible. Specifically, the defibrillator acquired in the present case for the intensive care unit of the internal medicine department would constitute that latter case, as its use in the provision of healthcare services can normally be expected in an intensive care unit.

IV. Conclusion

[28] In the light of the foregoing, the Supreme Administrative Court refers the question set out in point I of the operative part of this order to the Court of Justice. The Supreme Administrative Court does not consider the interpretation of Article 173(1) of the VAT Directive unambiguous (*acte clair*) or the existing case-law entirely appropriate to a situation in which the provision of healthcare services depends on the acquisition of certain equipment and the provision of other services depends on compliance with conditions for the provision of healthcare services (hence, nor is it an *acte éclaire*).

[29] […] [procedural steps]

[…]