Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

28 February 2018*

(Reference for a preliminary ruling — Value added tax — TVA Directive — Exemption of the leasing and letting of immovable property — Right of option available to taxpayers — Implementation by the Member States — Deduction of input tax — Use for the purposes of the taxable person's taxed transactions — Adjustment of the initial deduction — Not permissible)

In Case C-672/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Tax Arbitration Tribunal (Centre for Administrative Arbitration), Portugal), made by decision of 16 December 2016, received at the Court on 29 December 2016, in the proceedings

Imofloresmira — Investimentos Imobiliários SA

v

Autoridade Tributária e Aduaneira,

THE COURT (Seventh Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Imofloresmira — Investimentos Imobiliários SA, by S. Neto, advogada, and by J. Magalhães Ramalho, advogado,

– the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and R. Campos Laires, acting as Agents,

– the European Commission, by F. Clotuche-Duvieusart and by B. Rechena, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Portuguese.

Judgment

1 This request for, preliminary ruling concerns the interpretation of Articles 137, 167, 168, 184, 185 and 187 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

2 The request has been made in proceedings between Imofloresmira — Investimentos Imobiliários SA ('Imofloresmira') and the Autoridade Tributária e Aduaneira (tax and customs authority, Portugal), concerning the adjustment of deductions of value added tax (VAT) made by Imofloresmira in the course of its activities of buying, selling, letting and managing immovable property.

Legal context

EU law

3 Article 18, in Chapter 1 entitled 'Supply of goods', of Title IV entitled 'Taxable Transactions', of the VAT Directive provides:

'Member States may treat each of the following transactions as a supply of goods for consideration:

(a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the VAT on such goods, had they been acquired from another taxable person, would not be wholly deductible;

…'

4 Article 27, in Chapter 3 entitled 'Supply of services', of Title IV of that directive provides:

'In order to prevent distortion of competition and after consulting the VAT Committee, Member States may treat as a supply of services for consideration the supply by a taxable person of a service for the purposes of his business, where the VAT on such a service, were it supplied by another taxable person, would not be wholly deductible.'

5 In accordance with Article 135(1)(l), in Chapter 3 entitled 'Exemptions for other activities', of Title IX entitled 'Exemptions', of the VAT Directive, Member States are to exempt 'the leasing or letting of immovable property' from VAT.

6 Articles 137(1), also in Chapter 3 of that directive, permits Member States to give taxpayers the right to opt for the taxation of certain transactions, including those referred to in Article 135(1)(l) of that directive. Article 137(2) of that directive stipulates that Member States are to lay down the detailed rules governing exercise of the option under paragraph 1 of that article and that they may restrict the scope of that right.

7 Under Article 167, in Chapter 1 entitled 'Origin and scope of the right of deduction', of Title X entitled 'Deductions', of the VAT Directive, 'a right of deduction shall arise at the time the deductible tax becomes chargeable'.

8 Article 168, which is in the same chapter of that directive, provides:

‘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;

(b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;

…’

9 Article 176 of that directive, in Chapter 3 entitled ‘Restrictions on the right of deduction’, of Title X, provides:

‘The Council, acting unanimously on a proposal from the Commission, shall determine the expenditure in respect of which VAT shall not be deductible. VAT shall in no circumstances be deductible in respect of expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

…’

10 Article 184 of the VAT Directive, in Chapter 5 entitled ‘Adjustment of deductions’ of Title X, provides that ‘the initial deduction is to be adjusted where it is higher or lower than that to which the taxable person was entitled’.

11 Article 185(1), in Chapter 5 of that directive, states:

‘Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.’

12 Article 187, in Chapter 5 of that directive, provides:

‘1. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

Member States may, however, base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

2. The annual adjustment shall be made only in respect of one-fifth of the VAT charged on the capital goods, or, if the adjustment period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired, manufactured or, where applicable, used for the first time.’

Portuguese law

13 Article 12, entitled 'Waiver of the exemption' of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code, 'the CIVA') provides in paragraphs 4, 6 and 7:

'4 — Taxable persons who lease properties or lots thereof to other taxable persons who use them wholly or mainly for activities giving rise to a right of deduction may waive the exemption referred to in Article 9(29).

…

6 — The detailed rules and conditions for the waiver of the exemption provided for in paragraphs 4 and 5 shall be laid down in special legislation.

7 — The right to deduct the tax in those cases shall be governed by the rules laid down in Article 19 et seq., subject to the provisions laid down in any special regulations.'

14 Article 24 of the CIVA, entitled 'Adjustments of deductions in respect of fixed assets', provides in paragraphs 2, 3, 5 and 6:

'2 — The deductions shall be adjusted annually on expenditure on investment in immovable property if there is a positive or negative difference equal to or greater than five percentage points between the final percentage referred to in the previous article, applicable during the year of the occupation of the property and of each of the subsequent 19 calendar years, and that which was determined during the year of acquisition or the completion of the works.

3 — For the adjustment of deductions in respect of fixed assets, referred to in the preceding paragraphs, the procedure to be adopted is as follows:

(a) at the end of the year in which the use or occupation of the property began and in each of the 4 or 19 subsequent calendar years, as the case may be, it will be necessary to calculate the amount of the deduction which would apply if the acquisition of, or the completion of the works at, the immovable property had taken place during the year in question, in accordance with the final percentage for that year;

(b) the amount thus obtained shall be subtracted from the deduction made in the year in which the acquisition took place or from the sum of the deductions made until the year in which the works undertaken at the immovable property were completed;

(c) the positive or negative difference shall be divided by 5 or 20, as the case may be, with the result thus obtained corresponding to the amount to be paid or to the additional deduction to be made in the year in question.

…

5 — Where fixed assets are transferred during the period of adjustment, that adjustment shall be made only once for the unexpired period, to the extent that those assets are to be used for an activity which is taxed in full in the year in which the transfer takes place and in the subsequent years until the adjustment period expires. However, if the transfer is exempt from tax by virtue of Article 9(30) or (32), the property shall be deemed to be used for an activity that is not taxed and, in the former case, the relevant adjustment shall be made.

6 — The adjustment provided for in the previous paragraph shall also apply, to the extent that those assets are to be used for an activity that is not taxed in the case of immovable property for which there was an initial deduction, in full or in part, of the tax on the construction or purchase of the property, or other related investment costs, where:

(a) due to a change in the activity carried on or because of a legal requirement, the taxable person engages exclusively in exempt transactions without the right of deduction;

(b) the taxable person engages exclusively in exempt transactions without the right of deduction by virtue of Article 12(3) or Article 55(3) and (4);

(c) the property is being let under an exempt lease in accordance with Article 9(29).'

15 Article 26 of the CIVA entitled 'Adjustments of deductions in respect of properties not used for commercial purposes', states in paragraph 1:

'Where immovable property is not used for the purposes of the undertaking for which tax was deducted in one or more calendar years after the commencement of the period of 19 years referred to in Article 24(2), that shall give rise to an annual adjustment of 1/20 of the deduction made which must appear in the declaration for the final period of the year in question.'

16 The rules applicable to the right to opt for taxation under Article 12 of the CIVA were set out in Decree-Law No 241/86 (*Diário da República*, 1st series, No 190 of 20 August 1986) which was amended by Decree-Law No 21/2007 (*Diário da República*, 1st series, No 20 of 29 January 2007) ('the arrangement for waiving the exemption').

17 Article 10 of that arrangement, entitled 'Adjustment of the tax deducted' provides, in the version applicable to the main proceedings:

'1 — Notwithstanding Article 25(1) of the [CIVA], taxable persons who use immovable property which became wholly or partly deductible from the tax on the purchase are required to adjust the deductions made in a single instalment, in accordance with Article 24(5) of the [CIVA], and those assets shall be deemed to be used for an activity that is not taxed where:

(a) the immovable property is used for purposes other than the activity exercised by the taxable person;

(b) if it is not used for purposes other than the activity exercised by the taxable person, the immovable property is not actually used by the undertaking for more than two consecutive years.'

18 Article 25(1) of the CIVA, referred to in Article 10 of the arrangement for waiving the exemption cited in the preceding paragraph, corresponds to Article 26(1) of the CIVA, in the version applicable to the main proceedings, cited in paragraph 15 above.

The dispute in the main proceedings and the questions referred for a preliminary ruling

19 Imofloresmira is engaged in the purchase, sale, letting and management of residential, commercial and mixed properties which are owned by Imofloresmira or by third parties.

20 After audits were carried out in 2015 and 2016, the tax and customs authority found that certain lots in two properties owned by Imofloresmira, and for which it had opted for taxation, were vacant for more than two years and that, even though the lots were unoccupied, Imofloresmira had not made any adjustment to the tax deducted pursuant to Article 26(1) of the CIVA and Article 10(1)(b) of the arrangement for waiving the exemption.

21 On that basis, the tax and customs authority stated that the company should make the adjustment of the tax deducted, annually or definitively as the case may be, for the unoccupied lots of the properties which it owns and informed Imofloresmira that, since that adjustment had not been made, corrections to the tax owed had to be applied for a total sum of EUR 1 375 954.71 for the years 2011, 2012 and 2013. It is also apparent from the file submitted to the Court that the corrections for 2013 had an impact on the tax deducted in 2014.

22 Disagreeing with the decision of the tax and customs authority to make those corrections, Imofloresmira brought an action before the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Tax Arbitration Tribunal (Centre for Administrative Arbitration), Portugal) for annulment of the additional VAT assessment.

23 The referring court states that Imofloresmira ensured a continuous commercial promotion of available spaces for rent within those properties.

24 In that respect, the referring court states, in particular, that, between 2011 and 2013, it concluded agreements with estate agencies for that purpose and, on the advice of those agencies, undertook various marketing operations and marketing assistance, including in particular the creation of a brochure, a mailing list and a website, the creation and distribution of press releases to a wide audience and the display of advertising panels on the properties concerned. It goes on to state that Imofloresmira also amended its offer, first, by making available spaces to rent at more competitive prices and, secondly, by making it possible to negotiate cooling-off periods while tenants are moving in.

25 According to the referring court, the cost of the trade promotion services for the properties owned by Imofloresmira are reflected in the balance sheets for the years 2011-2013.

26 Imofloresmira submits to the referring court that the corrections referred to in paragraph 21 above are unlawful on the ground that the interpretation of the national legislation applicable to the main proceedings, as adopted by the tax and customs authority, infringes EU law, in particular the VAT Directive, and Article 26(1) of the CIVA and Article 10(1) of the arrangement for waiving the exemption.

27 Since it has doubts as to the compatibility with EU law of the national legislation applicable to the main proceedings, in particular Article 26(1) of the CIVA and Article 10(1) of the arrangement for waiving the exemption, as interpreted by the tax and customs authority, the referring court considers that an interpretation of Articles 137, 167, 168, 184, 185 and 187 of the VAT Directive is necessary.

28 In those circumstances, the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Tax Arbitration Tribunal (Centre for Administrative Arbitration)) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Where a property, despite being unoccupied for two or more years, is being marketed, that is to say, it is available on the market to be let or for the provision of “office centre” services, and it is established that the owner intends to let the property subject to VAT and has made the necessary efforts to give effect to that intention, is the classification of that property as “immovable property [which] is not used for the purposes of the undertaking” and/or “immovable property [which] is not used in taxed transactions” — for the purposes of Article 26(1) of the [CIVA] and

Article 10(1)(b) of the arrangement for waiving the VAT exemption in transactions relating to immovable property, introduced by Decree-Law No 21 of 29 January 2007, in their earlier versions — and therefore the fact that it is considered that the deduction initially made must be adjusted, since it is above the amount to which the taxable person was entitled, compatible with Articles 167, 168, 184, 185 and 187 of the [VAT Directive]?

(2) If the answer is in the affirmative, can that adjustment, having regard to the correct interpretation of Articles 137, 167, 168, 184, 185 and 187 of the [VAT Directive], be imposed only once for the entirety of the period yet to expire — as laid down in the Portuguese legislation, that is to say, in Article 10(1)(b) and (c) of the arrangement for waiving the VAT exemption in transactions relating to immovable property, introduced by Decree-Law No 21 of 29 January 2007, in its earlier version — where the property has been unoccupied for more than two years, but is still marketed to be let (with the possibility of waiver) and/or for the provision of services (taxable), with the aim of using the property in subsequent years for taxed activities which confer the right to deduct?

(3) Is Article 2(2)(c) of the arrangement for waiving the VAT exemption in transactions relating to immovable property introduced by Decree-Law No 21 of 29 January 2007, in conjunction with Article 10(1)(b) of that arrangement, compatible with Articles 137, 167, 168 and 184 of the [VAT Directive], by making it impossible for a taxable person for VAT to waive the VAT exemption when entering into new leases after a single adjustment to VAT has been made and by undermining the subsequent deduction arrangement during the adjustment period?'

Consideration of the questions referred for a preliminary ruling

The first question

29 By its first question, the referring court asks, in essence, whether Articles 167, 168, 184, 185 and 187 of the VAT Directive must be interpreted to the effect that they preclude national legislation which provides for the adjustment of the VAT initially deducted on the ground that a property, for which the right to opt for taxation was exercised, is regarded as no longer being used by the taxable person for the purposes of its own taxed transactions, where that property has remained unoccupied for more than two years, even where it is established that the taxable person has sought to rent it during that period.

30 As a preliminary point, it should be borne in mind that, according to the structure of the system introduced by the VAT Directive, input taxes on goods or services used by a taxable person for its taxed transactions may be deducted. The deduction of input taxes is linked to the collection of output taxes. Where goods or services acquired by a taxable person are used for the purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted (see, to that effect, judgment of 30 March 2006, *Uudenkaupungin kaupunki*, C-184/04, EU:C:2006:214, paragraph 24).

31 The taxation of leasing and letting transactions is a power which the EU legislature has conferred on the Member States in derogation from the general rule established in Article 135(1)(l) of the VAT Directive according to which leasing and letting transactions are exempt from VAT. The right to deduct attached to that taxation does not therefore operate automatically, but only if the Member States have made use of the power under Article 137(1)(d) of the VAT Directive and subject to the taxable persons exercising the right of option allowed to them (judgment of 12 January 2006, *Turn- und Sportunion Waldburg*, C-246/04, EU:C:2006:22, paragraph 26 and the case-law cited).

32 It is common ground that the Portuguese Republic made use of that power. In addition, it is clear from the order for reference that, when the leases relating to the properties at issue in the main proceedings were concluded, before the period of non-occupancy at issue, Imofloresmira opted for the taxation of the letting of those properties.

33 Furthermore, it is clear from the wording of Article 168 of the VAT Directive that, for an interested party to be entitled to the right to deduct, first, it must be a 'taxable person' within the meaning of that directive and, secondly, the goods and services in question must be used for the purposes of its taxed transactions (judgment of 15 December 2005, *Centralan Property*, C-63/04, EU:C:2005:773, paragraph 52).

34 In the present case, it is not disputed that Imofloresmira is a taxable person. On the other hand, the tax and customs authority required it to make adjustments to VAT deductions on the ground that the properties at issue had been unoccupied for over two years and were therefore regarded as no longer being used for the purposes of its own taxed transactions, even though it has been established that, during that period, that company always had the intention of letting those properties subject to a liability for VAT and undertook the necessary steps to that end.

35 Under Article 167 of the VAT Directive, a right of deduction arises at the time the deductible tax becomes chargeable. Consequently, only the capacity in which a person is acting at that time can determine the existence of the right to deduct (see, to that effect, judgments of 11 July 1991, *Lennartz*, C-97/90, EU:C:1991:315, paragraph 8, and of 30 March 2006, *Uudenkaupungin kaupunki*, C-184/04, EU:C:2006:214, paragraph 38).

36 It follows that, once the tax authority has accepted, on the basis of information provided by a business, that it should be accorded the status of a taxable person, that status cannot, in principle, subsequently be withdrawn retroactively on account of the fact that certain events have or have not occurred (see, to that effect, judgment of 29 February 1996, *INZO*, C-110/94, EU:C:1996:67, paragraph 21), save in cases of fraud or abuse.

37 It should be remembered that, according to settled case-law, the right to deduct provided for in Article 167 to 172 of the VAT Directive is an integral part of the VAT scheme and, in principle, may not be limited. It is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (judgment of 15 December 2005, *Centralan Property*, C-63/04, EU:C:2005:773, paragraph 50 and the case-law cited).

38 The deduction arrangement is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT therefore ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT (judgment of 15 December 2005, *Centralan Property*, C-63/04, EU:C:2005:773, paragraph 51 and the case-law cited).

39 It is important to recall also that it is the acquisition of goods or services by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The use to which the goods or services are put, or intended to be put, merely determines the extent of the initial deduction to which the taxable person is entitled under Article 168 of the VAT Directive and the extent of any adjustments in the course of the following periods (see, to that effect, judgment of 11 July 1991, *Lennartz*, C-97/90, EU:C:1991:315, paragraph 15).

40 It follows therefore that the entitlement to a reduction is retained in principle, even if subsequently, by reason of circumstances beyond its control, the taxable person does not make use of those goods and services which gave rise to a deduction in the context of taxed transactions (see, to that effect, judgments of 29 February 1996, *INZO*, C-110/94, EU:C:1996:67, paragraph 20, and of 15 January 1998, *Ghent Coal Terminal*, C-37/95, EU:C:1998:1, paragraphs 19 and 20).

41 In the present case, according to the interpretation adopted by the tax and customs authority, the fact that a property is unoccupied for a certain period interrupts the use of the property for the purposes of the business, requiring the taxable person to adjust the tax deducted, even if it is demonstrated that it still intends to continue to pursue a taxed activity.

42 It follows from the case-law cited in paragraphs 39 and 40 above that a taxable person retains the right of deduction where that right has arisen, even if that taxable person could not, for reasons beyond its control, use the goods or services giving rise to the deduction in the context of taxed transactions.

43 Any other interpretation of the VAT Directive would be contrary to the principle that VAT should be neutral as regards the tax burden on a business. It would be liable to create, as regards the tax treatment of the same investment activities, unjustified differences between businesses already carrying out taxable transactions and other businesses seeking by investment to commence activities which will in future be a source of taxable transactions. Likewise, arbitrary differences would be established between the latter businesses, in that final acceptance of the deductions would depend on whether or not the investment resulted in taxed transactions (judgment of 29 February 1996, *INZO*, C-110/94, EU:C:1996:67, paragraph 22).

44 Therefore, the principle of fiscal neutrality precludes national legislation which, by making the final acceptance of the VAT deductions dependent on the results of the taxable person's economic activity, creates, as regards the tax treatment of identical investment activities, unjustified differences between undertakings with the same profile and carrying on the same activity.

45 That conclusion cannot be called into question by the argument of the Portuguese Government that, due to the termination of the leases concluded previously, 'some change occurs in the factors used to determine the amount to be deducted', within the meaning of Article 185(1) of the VAT Directive, so that it would be necessary to carry out a proportional adjustment of the tax deducted.

46 In the first place, although it is true that the need to adjust the tax deducted may also exist as a result of circumstances outside the taxable persons' control (see, to that effect, judgment of 29 April 2004, *Gemeente Leusden and Holin Groep*, C-487/01 and C-7/02, EU:C:2004:263, paragraph 55), the fact remains that that provision cannot interfere with the fundamental principles underpinning the system introduced by the VAT Directive, and in particular the principle of fiscal neutrality.

47 Contrary to what the Portuguese Government maintains, to take the view that it is sufficient, in order to establish the existence of 'change' for the purposes of Article 185 of the VAT Directive, for a property to remain empty after the termination of the lease to which it was subject, due to circumstances outside the owner's control, even where it has been established that the owner still intends to use it for a taxed activity and undertakes the necessary steps to that end, would be tantamount to restricting the right of deduction through the provisions applicable to adjustments.

48 Secondly, even if Article 137(2) of the VAT Directive leaves Member States a wide discretionary power to determine the rules governing the exercise of the right of option and even to withdraw it (see, to that effect, judgment of 12 January 2006, *Turn- und Sportunion Waldburg*, C-246/04, EU:C:2006:22, paragraphs 27 to 30), the Member States could not use that power to infringe Articles 167 and 168 of that directive by revoking a right of deduction which has already been acquired.

49 A limitation of VAT deductions connected with taxed operations, after the right of option has been exercised, would not concern the 'scope' of the right of option which Member States may restrict by virtue of Article 137(2) of the TVA Directive, but the consequences of exercising that right (see, to that effect, judgment of 30 March 2006, *Uudenkaupungin kaupunki*, C-184/04, EU:C:2006:214, paragraph 46).

50 Finally, it is important to state that a taxable person acquires that status definitively only if he made the declaration of intention to begin the envisaged economic activities in good faith. In cases of fraud or abuse, in which, for example, the person concerned, on the pretext of intending to pursue a particular economic activity, in fact sought to acquire as his private assets goods in respect of which a deduction could be made, the tax authority may claim, with retroactive effect, repayment of the sums deducted on the ground that those deductions were made on the basis of false declarations (judgment of 21 March 2000, *Gabalfrisa and Others*, C-110/98 to C-147/98, EU:C:2000:145, paragraph 46).

51 It that regard, it should be noted that preventing possible tax evasion, avoidance and abuse is an objective recognised and encouraged by the VAT Directive, as is recalled in Article 131 (judgment of 29 April 2004, *Gemeente Leusden and Holin Groep*, C-487/01 and C-7/02, EU:C:2004:263, paragraph 76).

52 Consequently, if the tax authorities were to conclude that the right to deduct has been exercised fraudulently or abusively, which is a matter for the referring court to ascertain, they would be entitled to demand, with retrospective effect, repayment of the amounts deducted (judgment of 3 March 2005, *Fini H*, C-32/03, EU:C:2005:128, paragraph 33 and the case-law cited).

53 In the light of the foregoing, the answer to the first question is that Articles 167, 168, 184, 185 and 187 of the VAT Directive must be interpreted to the effect that they preclude national legislation which provides for the adjustment of the VAT initially deducted on the ground that a property, for which the right to opt for taxation was exercised, is regarded as no longer being used by the taxable person for the purposes of its own taxed transactions, where that property has remained unoccupied for more than two years, even though it is established that the taxable person has sought to rent it during that period.

Concerning the second and third questions

54 In view of the answer given to the first question, there is no need to answer the second and third questions.

The limitation of the temporal effects of the present judgment

55 In the event that the Court finds that EU law precludes national legislation such as that at issue in the main proceedings, the Portuguese Government requests the Court to limit the temporal effects of its judgment.

56 In support of its request, that government submits, in the first place, that a case-by-case verification of all of the legal relationships in order to determine whether taxable lessors correctly calculated and paid to the Member State concerned the amounts corresponding to the VAT adjustments constitutes in itself a task requiring a 'disproportionate' allocation of unavailable administrative and judicial resources, which, if not achieved, could give rise to abuse and to an even greater loss of tax revenue.

57 In the second place, the Portuguese Government argues that, in such a situation, the loss of the tax already adjusted or already collected in the meantime amounts to considerable sums and creates an intolerable budgetary imbalance.

58 In the third place, the Portuguese Government submits that the national legislation at issue in the main proceedings is intended to ensure that the amounts of deductible input VAT are directly and proportionately linked to actual output taxation, which demonstrates good faith on the part of the Portuguese State and the national tax authorities.

59 In that regard, it must be noted that a limitation of the temporal effects of a judgment is an exceptional measure which assumes that there is a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and that it appears that individuals and national authorities have been led to adopt practices which do not comply with EU law by reason of objective, significant uncertainty regarding the implications of European Union provisions, to which the conduct of other Member States or the European Commission may even have contributed (see, inter alia, judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 36 and the case-law cited).

60 It should be noted that a restriction of a taxable person's right to deduct VAT constitutes an exception to a fundamental principle of the common system of VAT, the legality of which, according to settled case-law, is acknowledged only in exceptional circumstances (see, to that effect, judgment of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 67).

61 It is apparent from the case-law of the Court that there is no objective and significant uncertainty as to the scope of EU law, in particular the provisions of the VAT Directive with regard to the extent of the right to deduct and its role within the system introduced by that directive (see, to that effect, judgment of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 68).

62 The Portuguese authorities cannot therefore rely on an objective, significant uncertainty regarding the implications of provisions of EU law. Since that criterion has not been satisfied, there is no need to determine whether the criterion relating to the seriousness of the economic repercussions has been met.

63 It follows from the foregoing that it is not appropriate to limit the temporal effects of the present judgment.

Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Articles 167, 168, 184, 185 and 187 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted to the effect that they preclude national legislation which provides for the adjustment of the value added tax initially deducted on the ground that a property, for which the right to opt for taxation was exercised, is regarded as no longer being used by the taxable person for the purposes of its own taxed transactions, where that property has remained unoccupied for more than two years, even though it is established that the taxable person has sought to rent it during that period.

[Signatures]