

C/2024/2569

22.4.2024

Judgment of the Court (Tenth Chamber) of 29 February 2024 (request for a preliminary ruling from the Varhoven administrativen sad - Bulgaria) – ‘Consortium Remi Group’ AD v Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-314/22, ⁽¹⁾ Consortium Remi Group)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Derogation provided for in Article 90(2) – Taxable amount – Reduction of the taxable amount – Total or partial non-payment of the price – Limitation period regarding applications for a subsequent reduction in the taxable amount of VAT – Date from which the limitation period begins to run – Taxable person’s entitlement to interest)

(C/2024/2569)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: ‘Consortium Remi Group’ AD

Defendant: Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Operative part of the judgment

1. Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with the principles of fiscal neutrality, proportionality and effectiveness,

must be interpreted as not precluding legislation of a Member State which provides for a limitation period to apply for a value added tax (VAT) refund resulting from a reduction in the taxable amount of VAT in the event of total or partial non-payment, the expiry of which results in penalising an insufficiently diligent taxable person, provided that that limitation period only begins to run from the date on which that taxable person was able, without showing a lack of diligence, to assert its right to a reduction. In the absence of national provisions concerning the rules governing the exercise of that right, the starting point for such a limitation period must be identifiable by the taxable person with a reasonable degree of probability.

2. Article 90(1) and Article 273 of Directive 2006/112, read in conjunction with the principles of fiscal neutrality and proportionality,

must be interpreted as precluding, in the absence of specific national provisions, a requirement on the part of the tax authority which renders the reduction in the taxable amount of value added tax (VAT), in the event of total or partial non-payment of an invoice issued by a taxable person, subject to the condition that that taxable person corrects the initial invoice beforehand and that it communicates beforehand to its debtor its intention to cancel the VAT, where it is impossible for that taxable person to make such an adjustment in due time, for reasons beyond its control.

⁽¹⁾ OJ C 303, 8.8.2022.

3. Article 90(1) of Directive 2006/112, read in conjunction with the principle of fiscal neutrality, must be interpreted as meaning that any right to a reduction in the taxable amount of value added tax (VAT) in the event of total or partial non-payment of an invoice issued by a taxable person gives a right to a refund of the VAT paid by that taxable person, together with interest for late payment, and that, in the absence of rules in the legislation of a Member State for applying any interest due, the date from which the taxable person asserts its right to that reduction in the VAT return relating to the ongoing tax period is the starting point for the calculation of that interest.
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