



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT

delivered on 19 December 2024¹

Case C-427/23

Határ Diszkont Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Request for a preliminary ruling from the Szegedi Törvényszék (Szeged High Court, Hungary))

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 1(2), Article 2(1)(c) and Article 78 – Refund of amounts paid as a VAT advance to customers not resident in the European Union – Administration fees – Independent supply subject to VAT – Concepts of ‘single complex supply’, ‘supply ancillary to the principal supply’ and ‘independence of supplies’ – Exemptions under Article 135(1)(d) and Article 146(1)(e) – Protection of legitimate expectations – Taxable amount)

I. Introduction

1. In these preliminary ruling proceedings, the Court of Justice is once again asked to address the question, which is of practical significance, of when, in the tax treatment of certain transactions, a single supply or multiple supplies are to be taken to exist. In the case of multiple supplies, there is also the question of the classification of such supplies as ‘independent supplies’, a ‘single complex supply’ or a ‘supply ancillary to the principal supply’.²

2. In the present case, a Hungarian company sold various goods to customers who are not resident in the European Union for export outside the European Union. The goods were sold at its store in Hungary, close to the border with Serbia. In principle, the transactions were exempt from value added tax (VAT) as supplies of goods dispatched or transported outside the European Union by a non-established taxable person. The company subsequently refunded the non-resident customers for the amounts they had paid as an advance on the VAT which would have been due had the exemption in question not been applied. However, in return for administering those refunds, the company charged fees corresponding to 15% of the amount refunded. In those circumstances, the question arises of the tax treatment of the administration fees. Do

¹ Original language: French.

² On those questions, see, recently, judgments of 4 March 2021, *Frenetikexito* (C-581/19, EU:C:2021:167), and of 20 April 2023, *Dyrektor Krajowej Informacji Skarbowej* (C-282/22, EU:C:2023:312). See also my Opinion in *Frenetikexito* (C-581/19, EU:C:2020:855, points 14 to 47, where there are several references to the case-law).

administrative procedures give rise to an independent and taxable supply, or are they ancillary supplies which share the same tax treatment as the exempt principal supply, namely the supply of goods for export? Alternatively, are they exempt on the basis of other provisions?

3. The present case offers the Court an opportunity to specify the criteria concerning the VAT treatment of such transactions. It also raises, in the alternative, questions relating to the protection of legitimate expectations in a situation in which for several years, the tax authority has audited and accepted VAT returns in which such transactions were considered exempt, as well as concerning the taxable amount to be taken into consideration in the present case and the method of calculating the VAT.

II. Legal context

A. *European Union law*

4. The legal framework is formed by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.³ Article 1(2) of that directive provides:

‘The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

...’

5. Article 2(1) of the VAT Directive states:

‘The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

...

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

...’

6. Under Article 73 of the VAT Directive:

‘In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be

³ OJ 2006 L 347, p. 1, in the version applicable in the period at issue (‘the VAT Directive’).

obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.’

7. Article 78 of that directive provides:

‘The taxable amount shall include the following factors:

...

(b) incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer.

...’

8. Article 135(1)(d) of the VAT Directive provides:

‘Member States shall exempt the following transactions:

...

(d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;

...’

9. Article 146(1) of that directive provides:

‘Member States shall exempt the following transactions:

...

(b) the supply of goods dispatched or transported to a destination outside the [European Union] by or on behalf of a customer not established within their respective territory ...;

...

(e) the supply of services, including transport and ancillary transactions, but excluding the supply of services exempted in accordance with Articles 132 and 135, where these are directly connected with the exportation or importation of goods covered by Article 61 and Article 157(1)(a).’

B. Hungarian law

10. The relevant national VAT legislation in the present case is the általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law No CXXVII on value added tax) of 2007 (*Magyar Közlöny* 2007/155), in its applicable version (‘the Hungarian Law on VAT’).

11. Paragraph 98(1) of the Hungarian Law on VAT provides:

‘Supplies of goods dispatched by post or transported from the country to a country outside the [European Union] shall be exempt from the tax, provided that the supply or transport:

- (a) is carried out by the supplier himself or by a third party acting on his behalf;
- (b) is carried out by the purchaser, or by a third party acting on his behalf if the additional conditions established in subparagraphs 3 and 4 of this article or in Paragraphs 99 and 100 of this law are satisfied.’

12. Paragraph 99 of that law provides:

‘1. Where the customer is a foreign traveller and the goods supplied ... form part of his personal luggage or his traveller’s luggage, in order for the exemption provided for in Paragraph 98(1) to apply:

- (a) the value of the supply, including the tax, must exceed an amount equal to EUR 175;
- (b) the foreign traveller must prove his status by means of travel or other documents issued by authorities recognised as competent in Hungary which identify the person (“the travel documents”);
- (c) at the point of departure of the goods from the [European Union], the authority must certify that the goods have left the territory by endorsing and stamping the form provided for this purpose by the State tax authorities or any other form authorised by the national tax authorities containing the data provided for in subparagraph 10 (“the tax refund application form”); the goods must be presented simultaneously with the original invoice which confirms that the goods have been supplied.

2. To qualify for the exemption, the seller of the goods must, in addition to issuing an invoice, complete a tax refund application form at the request of the foreign traveller. The foreign traveller’s personal details as shown in the invoice and in the tax refund application form must be identical to the personal details contained in the travel documents. The foreign traveller is required to present the travel documents to the seller of the goods. The tax refund application form may only contain details relating to the supply of goods from a single invoice and may not differ from those in the invoice. The tax refund application form shall be drawn up in triplicate by the seller of the goods, who shall give the first two copies to the traveller and keep the third copy with his own accounting records.

3. Where the customs authority certifies the exit of the goods referred to in subparagraph 1(c), it shall collect from the traveller the second copy of the tax refund application form bearing an endorsement and a stamp.

4. Exemption from tax shall be subject to the condition that:

- (a) the seller of the goods is in possession of the first copy of the tax refund application form bearing an endorsement and a stamp referred to in subparagraph 1(c), and

(b) if the tax has been levied at the time of supply of the goods, the seller shall refund the tax to the foreign traveller in accordance with subparagraphs 5 to 8.

5. The tax refund may be claimed from the seller of the goods by the foreign traveller in person or by an agent acting in his name and on his behalf. In the event that the foreign traveller:

(a) acts in person, he is required to present his travel documents;

(b) does not act in person, the person acting in his name and on his behalf must attach a written mandate made out in his name.

6. In order to obtain a refund of tax, the foreign traveller or his agent:

(a) shall hand to the seller of the goods the first copy of the tax refund application form bearing an endorsement and a stamp in accordance with subparagraph 1(c), and

(b) shall present to the seller of the goods the original copy of the invoice proving the supply of the goods.

7. The refunded tax shall be payable to the foreign traveller in forints, and must be paid in cash. However, the supplier of the goods and the foreign traveller may agree on a different currency and method of payment.

8. The seller of the goods must also ensure that the invoice proving that the goods have been supplied does not give rise to a further application for a tax refund. The seller must therefore, before returning the original of the invoice [to the traveller], mark it with the note “VAT paid” and make a photocopy of the invoice including that note; the photocopy must be retained in the seller’s records.

...’

13. Pursuant to Paragraph 98(3) of the CLI. törvény az adóigazgatási rendtartásról (Law No CLI on the administrative procedure in tax matters, of 2017) (*Magyar Közlöny* 2017/192), if the taxpayer qualifies for a tax exemption, he or she is required to prove it by a document or by any other appropriate means.

14. The az általános forgalmi adóról LXXIV. törvény (Law No LXXIV on value added tax) (*Magyar Közlöny* 1992/128), of 1992, in force until 31 December 2007, included in the list of supplies of goods and services exempt under Paragraph 30(1) of that law, read in conjunction with Annex 2 thereto, ‘tax refunds made by a trader to a foreign traveller pursuant to a special provision’.

III. Background to the dispute

15. In 2020, the Hungarian company Határ Diszkont Kft. (‘Határ Diszkont’) sold various goods to customers not resident in the European Union – and specifically to customers resident in Serbia – at its store in Tompa, Hungary, near the border between Hungary and Serbia. The foreign customers exported the goods purchased in Hungary on the same day. The invoices for cash payment for those purchases were marked ‘VAT paid’.

16. After the goods had been exported, Határ Diszkont refunded those customers for the full amount of the VAT shown in the invoice and issued the relevant disbursement receipt. It appears that, in order to be refunded for the amounts paid as a VAT advance, the non-resident customers had to physically return to the Határ Diszkont store.⁴ To administer those refunds, Határ Diszkont charged the foreign customers an administration fee of 15% of the VAT refunded.

17. The administration process consisted of the following steps: (a) checking that the non-resident customer had a valid travel document at the time of the sale; (b) issuing the customer with a tax refund application form and an invoice; (c) checking the customer's valid travel document and tax refund application form for the purpose of the VAT refund; (d) amending, copying and archiving the sales invoice; (e) refunding the non-resident customer, in cash, for the amount paid as a VAT advance; (f) issuing a disbursement receipt, signed by the customer; (g) issuing an invoice for the administration fee; (h) issuing a collection receipt, signed by the non-resident customer; (i) paying the administration fee in cash.

18. On the date on which the amounts paid as a VAT advance were refunded, Határ Diszkont issued invoices for payment in cash of those administration fees, payment of which was evidenced by the collection receipts. In its VAT returns, Határ Diszkont recorded the income from those administration fees as remuneration for exempt supplies.

19. The tax authority⁵ conducted an audit for the 2020 tax year in relation to VAT and other matters. During the audit, Határ Diszkont defended the position that the administration of refunds for amounts paid as a VAT advance was a VAT-exempt supply of services.

20. Határ Diszkont referred to information received from the tax authority itself⁶ in response to a question it had specifically asked on the subject. It was clear from the information that, since the administration fees were the corollary of the exemption, they should be considered incidental expenses to the supply of the goods and should therefore come under the same VAT exemption arrangements as the principal transaction.

21. During the audit procedure, Határ Diszkont also argued that the supply of services relating to the refund of amounts paid as a VAT advance should have been exempt from tax under the national provision transposing the exemption for financial transactions provided for in Article 135(1)(d) of the VAT Directive, and the provision transposing the exemption for transactions related to the exportation of goods provided for in Article 146(1)(e) of that directive.⁷

22. The tax authority rejected Határ Diszkont's arguments. By decision of 22 July 2022, it found that Határ was in VAT arrears. That decision was upheld by the decision of 27 October 2022 of the tax appeals division.⁸

23. Határ Diszkont brought an action before the referring court, the Szegedi Törvényszék (High Court, Szeged, Hungary), seeking annulment of that decision.

⁴ That fact was confirmed by the Hungarian Government at the hearing. Furthermore, under Paragraph 99(7) of the Hungarian Law on VAT, amounts paid as a VAT advance must, in principle, be refunded in cash.

⁵ The Nemzeti Adó- és Vámhivatal Bács-Kiskun Megyei Adó- és Vámigazgatósága (Tax and Customs Directorate for the Bács-Kiskun County, under the responsibility of the National Tax and Customs Authority, Hungary).

⁶ The information had been prepared by the Nemzeti Adó- és Vámhivatal Központi Irányítás Ügyfélkapcsolati és Tájékoztatási Főosztálya (Central Directorate of the National Tax and Customs Authority, Taxpayer Relations and Information Department, Hungary).

⁷ Paragraph 86(1)(d) and (e) and Paragraph 102(1)(b), respectively, of the Hungarian Law on VAT.

⁸ Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Division of the National Tax and Customs Authority, Hungary).

IV. Questions referred for a preliminary ruling

24. By decision of 3 July 2023, the Szegedi Törvényszék (High Court, Szeged) decided to stay the proceedings and to refer the following four questions to the Court of Justice:

- ‘(1) Is the practice of a Member State according to which the administration of VAT refunds to foreign travellers – which includes the administrative procedures from the time the standard forms for applying for the refund of VAT are submitted up to the refund of the tax – is considered to be a separate supply of services distinct from the tax-exempt supply of goods, on which VAT must be charged and paid in accordance with the general rules, compliant with Article 1(2), Article 2(1)(c), Article 78 and Article 146(1)(e) of [the VAT Directive] in a situation in which the administration fee, which is a percentage of the VAT to be refunded, is received and invoiced simultaneously with the VAT refund, at a time different from the supply and invoicing of the goods and after the customer has paid the consideration for the goods and those goods have exited for a third country?
- (2) In the event that the answer to the first question is in the affirmative, is Article 135(1)(d) of the VAT Directive infringed by the practice of a Member State whereby the fee charged for administering refunds of the VAT arising on the supply of goods to foreign travellers is not considered to be exempt from VAT as a “transaction concerning payments or debts”?
- (3) In the event that the answers to the first and second questions are in the affirmative, is the practice of a Member State compliant with the principle of the protection of legitimate expectations as one of the fundamental principles of the common VAT system where, according to that practice, the issuer of the invoices for the administration fee must also pay VAT retroactively, even though the tax authority had already audited that person on various occasions in the years prior to the inspection and during those audits had examined the issuer’s practice of considering the administration fee to be exempt from VAT and had not raised any objection or informed the issuer of any change in the Member State legislation in force until 31 December 2007, which expressly included “refunds of the tax to foreign travellers processed by the trader under specific legislation” as services exempt from tax?
- (4) In the event that the answers to the first three questions are in the affirmative, is the practice of a Member State tax authority compliant with Articles 73 and 78 of the VAT Directive where it consists of using as the taxable amount for VAT the consideration shown as exempt on the invoices issued for the administration fee and where, according to the tax authority’s decision, the issuer of the invoices must pay VAT on that taxable amount in accordance with the general rules, even though the consideration paid by the foreign travellers does not include that amount?’

25. During the proceedings before the Court, the Hungarian Government and the European Commission submitted written observations and participated in the hearing held on 17 October 2024.

V. Analysis

A. *The first question referred*

1. *Preliminary observations*

26. By its first question, the referring court asks, in essence, whether Article 1(2), Article 2(1)(c) and Article 78 of the VAT Directive must be interpreted as meaning that an administrative procedure relating to the ‘refund of VAT’, such as that at issue in the main proceedings, for the benefit of customers residing outside the European Union and concerning tax-exempt supplies of goods, constitutes a separate supply of services distinct from those supplies of goods, and as such whether it is therefore subject to VAT. If so, the referring court asks whether such a supply of services should be considered exempt under Article 146(1)(e) of the VAT Directive.

27. As a preliminary point, it should be noted that, in the present case, there is technically no VAT ‘refund’. Indeed, it is common ground that, in the present case, sales concerning supplies of the goods in question made by Határ Diszkont to customers who are not resident in the European Union are exempt from VAT under Article 146(1)(b) of the VAT Directive by reason of the exportation of those goods. Since these are tax-exempt transactions, no VAT need be paid on them. Therefore, there can be no VAT ‘refund’.

28. In the present case, at the time the goods were purchased, the non-resident customers paid Határ Diszkont a total gross price (‘the gross price’) which included the amount corresponding to the VAT which would have been due had the exemption in question not been applied, either because the goods were ultimately not exported, or because the customer was unable to produce the necessary documentation to prove that the substantive requirements for the exemption had been satisfied. In those circumstances, the payments made by Határ Diszkont to the non-resident customers were refunds of amounts they had paid in advance, corresponding to the amount of VAT potentially due (‘the amounts paid as a VAT advance’). Therefore, they are not VAT ‘refunds’.

29. Having clarified that point, in so far as it is merely applying the exemption in question, an administrative procedure for refunding amounts paid as a VAT advance, such as that at issue in the main proceedings, does not give rise, in my view, to a specific taxable supply subject to VAT (see Section 2). In the alternative, if it were found that there is indeed a taxable supply in the present case, it would, however, be an ancillary supply not independent of the principal supply, namely the supply of the tax-exempt goods, and so would come under the same exemption arrangements (see Section 3). Lastly, the exemption provided for in Article 146(1)(e) of the VAT Directive is, in any event, not relevant in the present case (see Section 4).

2. *The absence of a taxable supply*

30. According to Article 2(1)(c) of the VAT Directive, the supply of services for consideration within the territory of a Member State by a taxable person acting as such is subject to VAT.

31. Taxable transactions presuppose the existence of a transaction between the parties in which a price or consideration is stipulated. A supply of services is therefore taxable only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is

reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration for the service supplied to the recipient.⁹

32. The administration of refunds for amounts paid as a VAT advance thus constitutes a specific taxable supply only if it is possible to identify such a legal relationship, giving rise to reciprocal performance.

33. In the present case, customers who are not resident in the European Union purchase goods from Határ Diszkont qualifying for the VAT exemption under Article 146(1)(b) of the VAT Directive. However, in order for those transactions to qualify for that exemption, Határ Diszkont, as the taxable person, must submit evidence to the tax authority that the substantive requirements for that exemption have been satisfied.¹⁰ Indeed, non-compliance with a formal requirement may lead to the refusal of an exemption from VAT if that non-compliance would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied.¹¹

34. To produce such evidence for the tax authority, Határ Diszkont must have all the necessary documentation to enable it to show that those are indeed tax-exempt transactions. That documentation, which is essentially provided by the customer, must prove, inter alia, that the purchased goods have actually been exported. Therefore, it cannot be produced at the time of the purchase of the goods, but only after the goods have actually been exported. This is also apparent from Paragraph 99 of the Hungarian Law on VAT.

35. To be able to prove that the substantive requirements for the exemption have been satisfied,¹² Határ Diszkont must therefore obtain, manage and inspect all relevant documentation for the purpose of applying the exemption. It also bears the risk of any errors or other issues in relation to such documentation.

36. In such circumstances, as is clear from point 17 of the present Opinion, Határ Diszkont must perform a series of administrative tasks, from issuing the application form for the tax refund, to refunding the corresponding amounts, once it has all the documents proving that the substantive requirements for the exemption have been satisfied.

37. All of those activities, which inevitably give rise to costs, are intended to ensure that the exemption is applied to the supplies of the exported goods, rather than amounting to a specific and separate supply of services.

38. The economic purpose of the purchase transactions made by customers who are not resident in the European Union is to acquire VAT-exempt goods for export. However, without the abovementioned administrative procedures, those transactions would not be VAT-exempt, and without that exemption they would not actually take place, as is made clear in the order for reference.¹³ Applying the exemption is therefore key to achieving the economic purpose of the purchase transactions.

⁹ See, inter alia, judgment of 26 October 2023, *GIS* (C-249/22, EU:C:2023:813, paragraphs 32 and 33 and the case-law cited); see also judgment of 4 July 2024, *Credidam* (C-179/23, EU:C:2024:571, paragraph 36 and the case-law cited).

¹⁰ As expressly provided for in Hungarian law in Paragraph 98(3) of Law No CLI of 2017.

¹¹ See, inter alia, judgment of 29 February 2024, *B2 Energy* (C-676/22, EU:C:2024:186, paragraph 28 and the case-law cited).

¹² On the substantive requirements which must be satisfied in order for that exemption to apply, see judgment of 17 December 2020, *BAKATI PLUS* (C-656/19, EU:C:2020:1045, paragraph 55 et seq.).

¹³ See second paragraph of the part entitled 'Le recours au principal' on pages 8 and 9 of the French translation of the request for a preliminary ruling.

39. It follows that, in view of that economic purpose, the administrative procedure at issue appears to be inseparable from those transactions and essential for their performance.

40. In those circumstances, it would, in my view, be artificial to split the administrative procedure for refunding the amounts paid as a VAT advance due to the exemption on those supplies.¹⁴ In the light of all the circumstances in which those transactions take place, it is effectively a transaction which comprises a single supply from an economic point of view which should not be artificially split, so as not to distort the functioning of the VAT system.¹⁵

41. In that context, subject to the findings of fact of the referring court, the amounts received by way of administration fees therefore simply represent an increase in the selling price of the goods, accepted by non-resident customers, to cover the subsequent costs incurred as a result of applying the exemption relating to the purchase of the goods. Thus, for example, if the VAT rate applied is 27% and the gross price for the purchase of goods intended for export is 127 (100 being the price of the goods + 27 the amount of VAT paid in advance), if the exemption is applied, the (net) price for the purchase of the goods will ultimately be 104.05.¹⁶

42. In addition, as the referring court points out, Határ Diszkont displayed a notice in its store about the administration fees and informed non-resident customers of these. When they purchased the products for export, they were thus fully aware of those fees and surely must have taken them into account in their decision to purchase the goods for export. It follows that those buyers necessarily had to accept, at least implicitly, those terms when entering into the contract of sale for the goods in question. This is confirmed by the description of the contractual relationship between Határ Diszkont and customers who are not resident in the European Union in the request for a preliminary ruling.¹⁷

43. It is also clear from the order for reference that Határ Diszkont claims, without being contradicted, that the amount of the administration fees – namely, 15% of the amounts paid as a VAT advance and subsequently refunded – was calculated on the basis of the costs incurred. Thus, rather than constituting the actual consideration for a service supplied to a recipient, giving rise to income from a different economic activity from the one involving supplies of exempt goods, the amounts received in respect of administration fees essentially serve the purpose of covering the subsequent costs incurred by Határ Diszkont as a result of applying the exemption related to the supply of the goods in question.

44. Furthermore, according to settled case-law, in the field of VAT, suppliers act as tax collectors for the State and in the interest of the public exchequer. Those suppliers are liable to payment of VAT even though VAT, as a tax on consumption, is ultimately borne by the final consumer.¹⁸ However, charging VAT on Határ Diszkont's fees for that collection activity – guaranteeing the application of the exemption by reducing the price from 127 to 104.05 – on behalf of the State would be at odds with the system, to say the least.

¹⁴ See, inter alia, judgment of 18 April 2024, *Companhia União de Crédito Popular* (C-89/23, EU:C:2024:333, paragraph 35 and the case-law cited). See also my Opinion in *Frenetikexito* (C-581/19, EU:C:2020:855, point 16 et seq., with further references to the case-law).

¹⁵ See, inter alia, judgment of 18 April 2024, *Companhia União de Crédito Popular* (C-89/23, EU:C:2024:333, paragraph 35).

¹⁶ 15% of 27 equals 4.05.

¹⁷ See third paragraph of the part entitled 'Le recours au principal' on page 9 of the French translation of the request for a preliminary ruling.

¹⁸ Judgments of 20 October 1993, *Balocchi* (C-10/92, EU:C:1993:846, paragraph 25), and of 21 February 2008, *Netto Supermarkt* (C-271/06, EU:C:2008:105, paragraph 21).

45. Regarding the fact, highlighted in the tax authority's decision, that the sale of the exported goods and the administrative procedure did not take place at the same time,¹⁹ I would point out that a change in the price of a supply or service is, as a general rule, never simultaneous with the sale or supply, but is always subsequent to it. In the present case, it is ultimately a question of a change in the price. If the non-resident customers wanted to proceed with the purchase of the exempt goods from the Határ Diszkont store, they had to accept a retroactive change in price when the exemption was applied. Had they objected, they would have gone to another store.

46. In conclusion, it follows from all the foregoing considerations that, in the present case, the administration of refunds for amounts paid as a VAT advance for the purposes of the tax exemption on supplies of the goods in question does not give rise, in my view, to a specific and separate supply of services for those goods, which would be taxable under Article 2(1)(c) of the VAT Directive.

3. In the alternative, the nature of the dependent ancillary supply

47. It is my opinion that, were the Court to decide that the administration of refunds for amounts paid as a VAT advance gives rise to a separate supply of services, it would, in any event, be an ancillary supply not independent from the principal supply – namely the supply of exempt goods – and would thus share the same tax treatment in the form of the exemption.

48. In its settled case-law, the Court takes as its starting point the principle that, for VAT purposes, each supply should, as a general rule, be regarded as a distinct and independent supply. However, the principle of independence of each supply is not absolute. According to the case-law, this principle may be derogated from when a supply is a simple supply ancillary to the principal supply and not independent of it.²⁰

49. Thus, in certain circumstances, several formally distinct supplies, which could be provided separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent. That is the case where, inter alia, one or more elements are to be regarded as constituting the principal supply, while other elements are to be regarded, by contrast, as one or more ancillary supplies which share the tax treatment of the principal supply.²¹

50. In its case-law, the Court has developed certain indicators for establishing whether a non-independent ancillary supply exists.

51. In the first place, dependent ancillary supplies typically have no distinct economic interest for the recipient of the principal supply. From an economic point of view, they have a purely ancillary function, in so far as they merely serve to complement and supplement the principal supply and are therefore normally a consequence of that supply.²² Their economic aim can be achieved,

¹⁹ See fourth paragraph of the part entitled 'Décision de l'autorité fiscale de premier degré', on page 6 of the French version of the request for a preliminary ruling.

²⁰ See, in particular, judgment of 18 April 2024, *Companhia União de Crédito Popular* (C-89/23, EU:C:2024:333, paragraph 35 and the case-law cited). See also my Opinion in *Frenetikexito* (C-581/19, EU:C:2020:855, point 16 et seq., with further references to the case-law).

²¹ See, inter alia, judgment of 18 April 2024, *Companhia União de Crédito Popular* (C-89/23, EU:C:2024:333, paragraphs 36 and 37 and the case-law cited).

²² In that regard, see my Opinion in *Frenetikexito* (C-581/19, EU:C:2020:855, point 41 and the case-law cited).

from the perspective of the typical consumer, only in combination with the principal supply. Thus, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied.²³

52. That test is satisfied in the present case. Indeed, as is apparent from points 38 and 39 of the present Opinion, customers who are not resident in the European Union have an economic interest in the administration of refunds for amounts paid as a VAT advance which is not distinct from the principal supply, consisting of the supply of VAT-exempt goods intended for export. The exemption, and therefore the performance of activities aimed at implementing it, depend directly on those supplies. Without a supply, and so without an exemption, there would be no need for the administrative procedure, and vice versa. The economic interests in the supply and administrative procedure are thus interdependent.

53. In the second place, the Court examines the respective value of the principal and ancillary supplies, the value of the ancillary supply normally being a negligible proportion of the principal supply.²⁴

54. In the present case, the amount charged by Határ Diszkont in respect of administration fees is equal to 15% of the amounts paid as a VAT advance, which, according to the order for reference, is set at 27%. The value of the supply (if any) consisting of administering the refund of those amounts is thus equal to 4.05% of the price of the supplies and, as such, can be considered marginal relative to the value of the principal supply.

55. The Commission states in its observations that the refund application for the amounts paid as a VAT advance could potentially be submitted to an agent responsible for administering the refunds, and that the supply can therefore also be made by a third party independent of the economic operator who supplied the goods. However, that circumstance is irrelevant. Indeed, it is clear from the case-law that the dependent ancillary supply is not precluded by the fact that it could also, theoretically, be made by a third party.²⁵ In addition, the dependent ancillary supply is always made by the same economic operator who provides the principal supply. This is inherent in the ancillary nature of the supply in question. If that supply were provided by a third party as an independent, and so not ancillary, supply, then it would be taxable. Take transport costs, for example: if the seller arranges transport for the goods (for example, books), this constitutes an ancillary supply (taxable at the reduced rate). However, if the customer asks a third party to transport the goods (books), then this will be an independent supply (taxable at the standard rate).

56. Lastly, the exemption applicable to supplies of goods, as provided for in Article 146(1)(b) of the VAT Directive, is intended, in the context of international trade, to comply with the principle of taxation of the goods concerned at the place of destination of those goods, and thus to ensure that the transaction in question is taxed only at the place where the products concerned will be consumed.²⁶ Since VAT is a tax on consumption, which is charged within the tax jurisdiction of Hungary, but goods which are exported will be consumed outside that jurisdiction, VAT should

²³ See, inter alia, judgments of 4 May 2023, *Finanzamt X (Permanently installed equipment and machinery)* (C-516/21, EU:C:2023:372, paragraph 30 and the case-law cited), and of 18 April 2024, *Companhia União de Crédito Popular* (C-89/23, EU:C:2024:333, paragraph 37 and the case-law cited).

²⁴ See my Opinion in *Frenetikexito* (C-581/19, EU:C:2020:855, point 39 and the case-law cited).

²⁵ See my Opinion in *Frenetikexito* (C-581/19, EU:C:2020:855, point 43 and the case-law cited).

²⁶ Judgments of 17 October 2019, *Unitel* (C-653/18, EU:C:2019:876, paragraph 20), and of 17 December 2020, *BAKATI PLUS* (C-656/19, EU:C:2020:1045, paragraph 50).

not apply to supplies of those goods. In that way, double taxation (normally, the other State taxes imports of goods) is avoided²⁷ and goods produced in the European Union and exported outside it do not suffer a competitive disadvantage as a result.

57. Any interpretation of the VAT Directive whereby the administration of refunds for amounts paid as a VAT advance on exempt goods is considered a taxable supply would run counter to those objectives. Indeed, charging VAT on an ancillary supply which is necessary in order to refund those amounts would compromise the fiscal neutrality of exports.

4. The exemption under Article 146(1)(e) of the VAT Directive

58. In the further alternative, I will address the question of the application of the exemption provided for in Article 146(1)(e) of the VAT Directive, to which the referring court refers.

59. Article 146(1)(e) of the VAT Directive, which is in Chapter 6 of Title IX of that directive, requires Member States to exempt from VAT ‘the supply of services, including transport and ancillary transactions, but excluding the supply of services exempted in accordance with Articles 132 and 135, where these are directly connected with the exportation or importation of goods covered by Article 61 and Article 157(1)(a)’ of that directive.

60. It follows from its wording that, excluding exemptions relating to activities in the public interest, referred to in Article 132 of the VAT Directive, as well as those benefiting various miscellaneous activities that fall under Article 135 of the directive, the provision in question exempts the supply of services, including transport and ancillary transactions, which are directly connected with the exportation or importation of goods *covered by Article 61 or Article 157(1)(a)* of the VAT Directive.

61. The goods referred to in Article 61 of the VAT Directive are those which are not in free circulation but are placed under customs warehousing arrangements or similar,²⁸ or which are in free circulation but are covered by the internal Union transit procedure, or are under temporary importation arrangements with total exemption from import duty, or are under external transit arrangements. Article 157(1)(a) of the directive covers goods intended to be placed under warehousing arrangements other than customs warehousing or similar.

62. It must be noted, however, that there is nothing in the file to show that the goods exported in the present case are in one of the situations referred to in Article 146(1)(e) of the VAT Directive. Therefore, that provision does not apply in the present case.²⁹

5. Interim conclusion

63. In conclusion, I propose the following reply to the first question referred for a preliminary ruling: Article 1(2) and Article 2(1)(c) of the VAT Directive must be interpreted as meaning that the seller’s administrative procedure for refunding amounts paid as a VAT advance by customers not resident in the European Union in the context of VAT-exempt transactions involving supplies of goods they subsequently export does not give rise to a specific and independent supply of

²⁷ Opinion of Advocate General Campos Sánchez-Bordona in *BAKATI PLUS* (C-656/19, EU:C:2020:599, point 66 and the case-law cited).

²⁸ Article 61 of that directive expressly refers to Article 156 of that directive.

²⁹ The judgment of 8 November 2018, *Cartrans Spedition* (C-495/17, EU:C:2018:887), to which the referring court refers in the order for reference, concerned goods under the external transit procedure (see paragraphs 8, 24, 51 and 61 of that judgment).

service relating to the supply of such goods. As a consequence, that procedure is not taxable under the directive, since it is simply a means of applying the exemption, rather than a specific economic activity separate from the one relating to the supply of the goods.

B. The second, third and fourth questions

64. In view of the answer I propose to give to the first question, it is not necessary to reply to the second, third and fourth questions. Nevertheless, I will briefly outline below, in the alternative, my analysis of those questions.

1. The second question

65. By its second question, the referring court asks, in the event that the administrative procedure at issue did constitute a taxable supply of services, whether such a supply should be considered exempt under Article 135(1)(d) of the VAT Directive.

66. Under that provision, Member States are to exempt transactions involving, inter alia, ‘deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments’.

67. The referring court has doubts as to the applicability of that provision, in so far as customers not resident in the European Union who have received the supply of goods would have, by law, a pecuniary claim against Határ Diszkont for the refund of the amounts paid as a VAT advance and the administration fees would be related to that claim.

68. In the present case, no financial transaction took place which would justify the application of the provision in question.³⁰ Specifically, Határ Diszkont did not extend any credit to the non-resident customers. It merely kept the amounts corresponding to the VAT on the purchases in question which it would have had to pay to the public exchequer had the exemption not been applied and it did so until the non-resident customers could produce documentation proving that the substantive requirements for the exemption had been satisfied. Once the relevant documentation had been produced – bearing in mind that VAT was not due on those transactions because of the exemption applied – it refunded the corresponding amount to the non-resident customer.

69. It follows that, in any event, the exemption provided for in Article 135(1)(d) of the VAT Directive does not apply in the present case.

2. The third question

70. By its third question, the referring court asks, in essence – assuming the answer to the first and second questions is in the affirmative – whether the principle of the protection of legitimate expectations precludes the tax authority from making certain historic transactions subject to VAT given that (i) the tax authority inspected and accepted the taxable person’s VAT returns for several years without challenging, during the various tax audits, the classification of those transactions as ‘VAT-exempt transactions’; (ii) the tax authority did not inform the taxable person of the change in the applicable national legislation, which, in the version preceding the

³⁰ See, in that regard, judgment of 17 December 2020, *Franck* (C-801/19, EU:C:2020:1049, paragraph 41 and the case-law cited).

legislative amendment, expressly referred to those transactions as an exempt supply of services; and (iii) Határ Diszkont requested advice from the tax authority during the 2020 tax audit, as stated in the order for reference.³¹ The response which Határ Diszkont received stated that the administration fees in question should be considered as incidental expenses to a VAT-exempt supply of goods and, as such, shared the tax treatment of the principal transaction as regards the VAT exemption.

71. According to the case-law of the Court, the principle of the protection of legitimate expectations is among the fundamental principles of the European Union.³² The Court specified that that principle extends to any person in a situation in which an administrative authority has caused that person to entertain expectations which are justified by precise assurances provided to him or her.³³ That principle presupposes that the conduct of the administrative authorities has given rise to a reasonable and legitimate expectation in the mind of a reasonably prudent economic agent.³⁴

72. First, there is the question of the failure to challenge, during several tax audits, the classification of the administration of refunds for amounts paid as a VAT advance as ‘VAT-exempt transactions’ is compatible with the principle of legitimate expectations.

73. It is clear from the case-law that the mere acceptance, even for several years, by the national tax authority of the VAT returns, which did not include amounts relating to certain transactions, does not amount to a precise assurance provided by that authority that VAT is not to be applied to those transactions and cannot, therefore, give rise to a legitimate expectation in that regard.³⁵ Similarly, I take the view that the mere acceptance for several years of VAT returns from a taxable person without challenging, during tax audits, the classification of those transactions as ‘VAT-exempt transactions’ cannot, in principle, amount to a precise assurance. Therefore, that mere acceptance cannot create a legitimate expectation for a reasonably prudent economic operator as to the exempt nature of those transactions.³⁶

74. In the present case, however, the order for reference states that as is ‘clearly apparent’ from the audit records, the tax authority considered for years that ‘[Határ Diszkont] had lawfully issued VAT-exempt invoices for the administration service’. Nevertheless, the referring court provides no further clarification in that regard. It is therefore for the referring court to determine whether those records contained ‘precise assurances’, under the terms of the abovementioned case-law of the Court, as to the tax treatment of the administration service at issue, if such a service – *quod non* – were to be recognised in the present case.³⁷

³¹ See point 20 of the present Opinion.

³² See judgments of 7 June 2005, *VEMW and Others* (C-17/03, EU:C:2005:362, paragraph 73 and the case-law cited), and of 14 March 2013, *Agrargenossenschaft Neuzelle* (C-545/11, EU:C:2013:169, paragraph 23 and the case-law cited).

³³ See, in particular, judgment of 15 April 2021, *Administration de l’Enregistrement, des Domaines et de la TVA* (C-846/19, EU:C:2021:277, paragraph 90 and the case-law cited).

³⁴ See, in that regard, my Opinion in *BALTIC CONTAINER TERMINAL* (C-376/23, EU:C:2024:616, point 68 and the case-law cited).

³⁵ Judgment of 15 April 2021, *Administration de l’Enregistrement, des Domaines et de la TVA* (C-846/19, EU:C:2021:277, paragraph 92).

³⁶ See also, to that effect, judgments of 9 July 2015, *Cabinet Medical Veterinar Dr. Tomoiagă Andrei* (C-144/14, EU:C:2015:452, paragraph 46), and of 9 July 2015, *Salomie and Oltean* (C-183/14, EU:C:2015:454, paragraphs 47 and 48).

³⁷ It is possible that, in particular situations, the tax authority’s practice when it comes to the tax treatment of certain transactions may give rise to justified expectations for an economic operator regarding that treatment, such that a different application with a retroactive effect, simply because the authority has changed its mind, could prove problematic. Nevertheless, in view of the answer I proposed to the first question, I do not consider it necessary to address the sensitive matter of determining what constitutes a ‘precise assurance’ of the tax authority in the context of tax audits relating to previous tax periods.

75. Second, as regards the lack of information on the change in applicable national legislation, I do not see how such an omission could constitute a ‘precise assurance’ giving rise to expectations which are justified within the meaning of the case-law referred to in point 71 of the present Opinion. There seems to be no obligation for the tax authority to notify taxable persons of changes in tax legislation which reasonably prudent economic operators should be aware of.

76. Third, the information provided by the tax authority in response to Határ Diszkont’s question cannot, in my opinion, be characterised in this case as a ‘precise assurance’ giving rise to justified expectations. Indeed, as the referring court itself notes, that advice – which was non-binding – was provided during the tax audit (and because of that audit). Such ‘*ex post*’ and non-binding information could not therefore have consequences for the transactions already made which were the subject of the tax audit.

3. *The fourth question*

77. In its fourth question, the referring court has doubts about the interpretation of Articles 73 and 78 of the VAT Directive as regards the taxable amount to be taken into consideration in the present case, as well as the method of calculating VAT. Specifically, in the light of the Court’s case-law, the referring court queries the approach taken by the tax authority in which it considers, in the present case, the administration fees as a net amount and not a gross amount including VAT. This question need only be answered if – assuming the answer to the first three questions is in the affirmative – the administrative procedure at issue were to be considered a taxable and non-exempt supply of a service.

78. In that respect, I recall that, under Article 73 of the VAT Directive, the taxable amount is to include ‘everything which constitutes consideration’ obtained or to be obtained by the supplier. The consideration corresponds to the agreed price which the customer has paid. Article 78(a) of the directive goes on to make it clear that the taxable amount is to include all taxes, excluding the VAT itself. The relevant rate is then to be applied to that taxable amount (Article 93 of that directive). Article 1(2) of that directive states more clearly that on each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, is to be chargeable after deduction of the amount of VAT.³⁸

79. As a result, in order to determine the taxable amount, the VAT under Article 78(a) of the directive must be deducted from any consideration within the meaning of Article 73 thereof.³⁹

80. It follows from the foregoing that in every agreed (gross) price the VAT is always included in the (applicable) amount which is provided for by law. As regards the tax due to the tax creditor, the question of whether or not the contracting parties knew the applicable amount is irrelevant.⁴⁰

³⁸ See my Opinion in *Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Possibility of correction in the event of an error in the tax rate)* (C-606/22, EU:C:2023:893, point 29).

³⁹ See my Opinion in *Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Possibility of correction in the event of an error in the tax rate)* (C-606/22, EU:C:2023:893, point 30).

⁴⁰ See my Opinion in *Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Possibility of correction in the event of an error in the tax rate)* (C-606/22, EU:C:2023:893, point 32. See also judgment of 21 March 2024, *Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Possibility of correction in the event of an error in the tax rate)* (C-606/22, EU:C:2024:255, paragraph 26 and the case-law cited).

81. Thus, the Court has explicitly held that the corollary of Article 78(a) of the VAT Directive is the fact that VAT is always automatically included in the agreed price, even if the taxable person errs in determining the applicable rate.⁴¹

82. In the present case, in the event that the administrative procedure at issue were – *quod non* – to be regarded as a taxable and non-exempt supply of services, the agreed price, namely 15% of the amounts paid as a VAT advance and then refunded, should be considered a gross price which already includes VAT. The taxable amount on which the VAT rate is to be applied should be calculated accordingly. The fact that the taxable person may have erred in considering the transactions at issue as exempt and therefore believed that the tax rate applicable to those transactions should have been zero is irrelevant in that regard.

VI. Conclusion

83. In the light of the foregoing considerations, I propose that the Court should respond to the questions referred for a preliminary ruling by the Szegedi Törvényszék (Szeged High Court, Hungary) as follows:

Article 1(2) and Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

must be interpreted as meaning that the seller's administrative procedure for refunding amounts paid as a value added tax (VAT) advance by customers not resident in the European Union in the context of VAT-exempt transactions involving supplies of goods they subsequently export does not give rise to a specific and independent supply of service relating to the supply of such goods. As a consequence, that procedure is not taxable under the directive, since it is simply a means of applying the exemption, rather than a specific economic activity separate from the one relating to the supply of the goods.

⁴¹ Judgment of 21 March 2024, *Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Possibility of correction in the event of an error in the tax rate)* (C-606/22, EU:C:2024:255, paragraph 27).