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Provisional edition

JUDGMENT OF THE COURT (Ninth Chamber)

11 juni 2020 (*)

„Prejudiciële verwijzing – Belasting over de toegevoegde waarde (btw) – Richtlijn 2006/112/EG – Artikel 17, lid 2, onder g) – Overbrenging van roerende goederen binnen de Europese Unie met het oog op de verrichting van diensten – Artikelen 170 en 171 – Recht op teruggaaf van de btw aan niet in de lidstaat van teruggaaf gevestigde belastingplichtigen – Richtlijn 2008/9/EG – Begrip ,niet in de lidstaat van teruggaaf gevestigde belastingplichtige' – Niet in de lidstaat van teruggaaf voor btw-doeleinden geïdentificeerde belastingplichtige"

In zaak C-242/19,

betreffende een verzoek om een prejudiciële beslissing krachtens artikel 267 VWEU, ingediend door de Tribunal Bucureşti (rechter in eerste aanleg Boekarest, Roemenië) bij beslissing van 18 januari 2019, ingekomen bij het Hof op 20 maart 2019, in de procedure

CHEP Equipment Pooling NV

tegen

Agenţia Naţională de Administrare Fiscală – Direcţia Generală Regională a Finanţelor Publice Bucureşti – Serviciul soluţionare contestaţii,

Agenţia Naţională de Administrare Fiscală – Direcţia Generală Regională a Finanţelor Publice Bucureşti – Administraţia fiscală pentru contribuabili nerezidenţi,

wijst

HET HOF (Negende kamer),

samengesteld als volgt: S. Rodin, kamerpresident, K. Jürimäe (rapporteur) en N. Piçarra, rechters,

advocaat-generaal: G. Hogan,

griffier: A. Calot Escobar,

gezien de stukken,

gelet op de opmerkingen van:

ᑭ Equipment Pooling NV, by E. Băncilă, avocat,

Romanian Government, initially represented by E. Gane, L. Liţu and C.-R. Canţăr, then by E. Gane and L. Liţu, acting as Agents,

European Commission, by A. Armenia and L. Lozano Palacios, acting as Agents,

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

the following

Judgment

This request for a preliminary ruling concerns the interpretation of Article 17 (2) of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1). 1), as amended by Council Directive 2008/8 / EC of 12 February 2008 (OJ 2008 L 44, p. 11) ('the VAT Directive'), as well as Article 2 (1) and Article 3 of Council Directive 2008/9 / EC of 12 February 2008 laying down detailed rules for the refund of value added tax, laid down in Directive 2006/112 / EC, to taxable persons who are not resident in the Member State of refund but in a Member State established in another Member State (OJ 2008 L 44, p. 23).

The reference has been made in proceedings between CHEP Equipment Pooling NV ('CHEP'), a company established in Belgium, of the one part, and Agenția Națională de Administrare Fiscală - Direcția Generală Regională a Finanțelor Publice București - Serviciul soluționare contestații (national tax authority - Regional Directorate-

General for Public Finance of Bucharest - Dispute Resolution Service, Romania) and Agenția Națională de Administrare Fiscală - Direcția Generală Regională a Finanțelor Publice București - Administrația fiscală pentru contribuabili nerezidenți (National Tax Authority - Regional Directorate-General for Public Finance tax authorities for non-resident taxpayers, Romania) (hereinafter jointly: 'the Romanian tax authorities'), of the other part,on the refusal of the Romanian tax authorities to return the value added tax (VAT) paid in Romania to this company.

Applicable provisions

Union law

VAT directive

Article 17 of the VAT Directive states:

"1. The transfer by a taxable person of a good of his business to another Member State is equated with the supply of goods for consideration.

Transfer to another Member State shall be deemed to be any shipment or transport of movable tangible property for business purposes, by or on behalf of the taxable person, outside the territory of the Member State in which the property is located, but within the [European Union] .

2. The transfer or transport of goods, if they involve one of the following, shall not be considered as shipments to another Member State:

[...]

e temporary use of that good within the territory of the Member State of arrival of the dispatch or transport for the purpose of services rendered by the taxable person established within the Member State of departure of the dispatch or transport;

3. If one of the conditions for the application of paragraph 2 is no longer fulfilled, the good shall be considered to be transferred to another Member State. In that case, the transfer shall take place at the time when this condition is no longer fulfilled. "

Article 21 of that directive provides:

'An intra-Community acquisition of goods for consideration is equivalent to the use by a taxable person for the business purposes of a good which is dispatched or transported by or on behalf of the taxable person from another Member State in which it is manufactured, collected, processed, purchased, acquired within the meaning of Article 2 (1) (b) or has been imported by that taxable person into that other Member State in the course of his business. "

Article 44 of the directive contains the following:

'The place of supply of a service supplied to a taxable person acting as such is the place where the taxable person has established his registered office. However, if these services are provided for a permanent establishment of the taxable person in a place other than where he has established his place of business, the place of supply shall be the place where that permanent establishment is situated. In the absence of such a registered office or permanent establishment, the place of supply of services is the domicile or usual residence of the taxable person purchasing those services. "

Article 170 of the same directive states:

'A taxable person who, within the meaning of... Articles 1 (1) and 3 of Directive [2008/9] and 171 of this Directive, is not established in the Member State in which he purchases or supplies goods and services importing goods subject to VAT, is entitled to a refund of VAT if the goods and services are used for the following transactions:

e acts referred to in Article 169;

insactions for which the tax is payable only by the buyer in accordance with Articles 194 to 197 and Article 199. "

Article 171 (1) of the VAT Directive provides:

"The refund of VAT to taxable persons who are not established in the Member State where they purchase goods and services or import goods subject to VAT but are established in another Member State shall be made in accordance with the detailed rules laid down in Directive [2008/9]."

Article 171a of the VAT Directive states:

'Member States may, instead of providing for a refund in accordance with Directive [2008/9], tax on the supply of goods or services to a taxable person for which the taxable person is liable to pay the tax in accordance with Articles 194 to 197 or 199 allow this tax to be deducted in accordance with the procedure laid down in Article 168. [...]

To that end, Member States may exclude the taxable person liable for payment of the tax from a refund under Directive [2008/9]. "

Article 196 of the VAT Directive provides as follows:

"VAT is payable by the taxable person or by the non-taxable legal person identified for VAT purposes who purchases a service as referred to in Article 44 when the service is provided by a taxable person not established in that Member State."

Article 214 (1) (a) and (b) of that directive states:

'Member States shall take the necessary measures to identify under an individual number the following persons:

y taxable person, other than one referred to in Article 9 (2), who supplies goods or services within their respective territories which give rise to a right of deduction, other than supplies of goods or services for which, in accordance with Articles 194 to 197 and Article 199 only the customer or the person for whom the goods or services are

intended is liable for VAT;

y taxable or non-taxable legal person who makes intra-Community acquisitions of goods which are subject to VAT under Article 2 (1) (b) or who exercises the right of option referred to in Article 3 (3), his intra-Community acquisitions subject to VAT ”.

Directive 2008/9

Under Article 1 of Directive 2008/9, it lays down 'detailed rules for the refund of [VAT] under Article 170 of the [VAT Directive] to taxable persons not established in the Member State of refund which fulfill the conditions laid down in Article 3 ".

Article 2 (1) and (2) of Directive 2008/9 contains the following definitions for the purposes of that directive:

‹able person not established in the Member State of refund: any taxable person within the meaning of Article 9 (1) of [the VAT Directive] who is not established in the Member State of refund but in another Member State;

nber State of refund: the Member State in which VAT was charged to the taxable person not established in the Member State of refund in respect of the services or supplies of goods supplied by other taxable persons in that Member State for that taxable person, or in respect of imports of goods in this Member State ”.

Article 3 of Directive 2008/9 states:

'This Directive applies to a taxable person not established in the Member State of refund, who fulfills the following conditions:

ring the refund period, he did not have, in the Member State of refund, the seat of his business activities, or a permanent establishment from which business activities were carried on, or, in the absence of such a seat or permanent establishment, his residence or his usual place of business residence;

ring the refund period, he has not made any supplies of goods or services, the place of which is deemed to be located in the Member State of refund, except for the following actions:

nsport services and related services that are exempted under Articles 144, 146, 148, 149, 151, 153, 159 or 160 of [the VAT Directive];

pplies of goods or services for which the customer is liable to pay VAT under Articles 194 to 197 and 199 of [the VAT Directive]. "

Article 5 of Directive 2008/9 is worded as follows:

'Each Member State shall refund to any taxable person not established in the Member State of refund a refund of the VAT levied on the supply of goods or services effected for that taxable person by other taxable persons in that Member State, or on the importation of goods in that Member State, insofar as these goods or services are used for the following actions:

e transactions referred to in Article 169 (a) and (b) of [the VAT Directive];

nsactions the customer of which is liable to pay the tax in accordance with Articles 194 to 197 and 199 of [the VAT Directive], as applied in the Member State of refund.

Without prejudice to Article 6, for the purposes of this Directive, the right to a refund of input tax shall be determined in accordance with [the VAT Directive], as applied in the Member State of refund. "

Romanian law

Article 128 of Lege No 571/2003 privind Codul fiscal (Law No 571/2003 on the Tax Code), in the version applicable to the facts of the main proceedings ('the Tax Code'), provides:

"(1) The term" supply of goods "is taken to mean the transfer or transfer of the power to dispose of tangible property as owner.

[...]

(9) An intra-Community supply is a supply of goods, within the meaning of paragraph 1, which are dispatched or transported from one Member State to another by or on behalf of the supplier or recipient of those goods.

(10) The transfer by a taxable person of a good of his business from Romania to another Member State shall be treated as an intra-Community supply for consideration, except in the cases of no transfer referred to in paragraph 12.

(11) The shipment referred to in paragraph 10 means the transfer or transportation of movable tangible property from Romania to another Member State by or on behalf of the taxable person for business purposes.

(12) For the purposes of this Title, the shipment or transportation of goods from Romania to another Member State by or on behalf of the taxable person for the following transactions is not considered to be a shipment:

[...]

e temporary use of the goods concerned, within the territory of the Member State of destination of the goods dispatched or transported, for the provision of services in the Member State of destination by the taxable person established in Romania;

[...]

(13) If one of the conditions referred to in paragraph 12 is no longer fulfilled, the dispatch or transport of the goods concerned is considered to be a shipment from Romania to another Member State. In that case, the shipment is deemed to have taken place when that condition was no longer met. "

Article 130 ^ 1 (2) (a) of the Code states:

'The following transactions are treated as intra-Community acquisitions for consideration:
e destination by a taxable person for business purposes of goods consigned or transported by or on behalf of that taxable person from the Member State in the territory of which the goods were produced, reclaimed, purchased, acquired on the basis of his business or imported, if the transport or dispatch of these goods, where it would take place from Romania to another Member State, would be considered as the transfer of goods to another Member State within the meaning of Article 128 (10) and (11) ".

Article 147 ^ 2 (1) (a) of the Code provides:

'Under the conditions laid down by government decree:
:axable person not established in Romania but established in another Member State who is not registered for VAT purposes and who is not obliged to do so in Romania shall be eligible for a refund of the VAT paid on the import and acquisition of goods or services in Romania".

Point 49 (1) of the Norme metodologice de aplicare a Legii No 571/2003 privind Codul fiscal (Implementing provisions of the Tax Code) states:

'Pursuant to Article 147 (2) (1) (a) of the Tax Code, any taxable person not established in Romania but in another Member State is eligible for a refund of VAT on the import and acquisition of goods or services in Romania. The [VAT] is refunded by Romania, provided that the taxable person fulfills the following conditions:
ring the refund period, he did not have the seat of his business activities in Romania, nor a permanent establishment from which business activities were carried on, or, in the absence of such a seat or permanent establishment, his residence or his usual residence;
ring the refund period, he is not registered for VAT purposes in Romania, nor is he obliged to do so, in accordance with Article 153 of the Tax Code;
ring the refund period, he has not made any supplies of goods or services, the place of which is deemed to be located in Romania, except for the following acts:
provision of transport services and associated services, which are exempted under Articles 143 (1) (c) to (m), 144 (1) (c) and 144 (1) of the Tax Code;
plies of goods or services for which the customer is liable to pay VAT under Article 150 (2) to (6) of the Tax Code. "

Article 153 (5) (a) of the Tax Code is worded as follows:

'A taxable person who is not established in Romania and who is not registered for VAT purposes in Romania shall, in accordance with this Article, apply for a registration for VAT purposes prior to transactions if he intends to:
make an intra-Community acquisition of goods on which he is liable to pay the tax in accordance with Article 151. "

The main proceedings and the questions referred for a preliminary ruling

CHEP is a company established in Belgium that is active in pallet rental within Europe. To this end, CHEP buys pallets in different Member States for resale to other entities of the CHEP group established in each Member State, which sublet these to customers in their respective Member State.

Between 1 October and 31 December 2014, CHEP purchased pallets from a Romanian supplier. The sales prices invoiced by this supplier included VAT. The pallets in question were transported from the supplier's company in Romania to another destination which was also located in Romania.

CHEP subsequently leased those pallets and pallets which it had acquired in other Member States of the Union and which it had transported for hire to Romania to CHEP Pooling Services Romania SRL ('CHEP Romania'), a company established in Romania . CHEP Romania subleased these different pallets to Romanian customers who could ship them to Romania, other Member States or third countries. The pallets used to transport goods declared for export were then returned to CHEP Romania and CHEP Romania declared them for import and invoiced their value as well as the relevant VAT to CHEP.

In June 2015, CHEP applied to the Romanian tax authorities for a refund of the VAT charged by the Romanian pallet supplier and the VAT invoiced by CHEP Romania.

The Bucharest Tax Authority for non-resident taxpayers refused this refund by decision of April 14, 2016. The Bucharest Tax Litigation Service rejected the objection that CHEP had raised against this refusal by decision of October 11, 2016.

Both decisions are based on the fact that under Article 153 (5) of the Tax Code, CHEP was obliged to identify itself for VAT purposes in Romania. Indeed, the Romanian tax authorities found that CHEP rented to CHEP Romania not only pallets purchased in Romania, but also pallets which it had purchased in other Member States and which had been transported to Romania for that lease. The shipment of pallets purchased in other Member States is thus treated in Romania as an intra-Community acquisition, so that CHEP had to identify itself for VAT purposes in Romania.

On 3 April 2017, CHEP brought an action before the Tribunal București (Judge at First Instance, Bucharest, Romania) for the annulment of the decisions of 14 April 2016 and 11 October 2016, and for the VAT refund for which it lodged an application for refund .

Before that court, CHEP submitted that, first, in accordance with Directive 2008/9, as a company established in Belgium, it was entitled to a VAT refund, irrespective of whether it had to identify itself for VAT purposes in Romania, secondly, not was obliged to identify itself for VAT purposes in Romania because the shipment of pallets could not be equated with an intra-Community acquisition, and thirdly, it fulfilled the legal conditions to qualify for VAT refund. CHEP also points out that Directive 2008/9 has been incorrectly transposed into Romanian law, since VAT refunds have been made conditional on the condition that the taxable person is not identified for VAT purposes in Romania.

On the other hand, the tax authorities argue that as long as it has not been demonstrated that the pallets purchased in Member States other than Romania have been returned to the Member State from which they were sent or transported to Romania, CHEP cannot claim that the shipment of pallets purchased in other Member States

to Romania is a case of non-shipment within the meaning of Article 128 (12) (g) and (h) of the Tax Code.

In view of these arguments, the referring court considers it necessary to clarify the cases of non-shipment within the meaning of Article 17 (2) of the VAT Directive and the obligation to identify for VAT purposes a non- resident company which does not have the necessary technical and personnel resources in Romania to carry out taxable transactions, but only provides services the place of which is for VAT purposes, located in Romania. He also wonders whether the right to a VAT refund can be made subject to the condition that the taxable person is not identified for VAT purposes in the Member State of refund and is not obliged to do so.

The Tribunal Bucureşti then decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

oes the transport of pallets from one Member State to another Member State for subsequent rental in the latter Member State to a taxable person established in Romania and registered for VAT purposes constitute a non-shipment within the meaning of Article 17 (2) of [the VAT Directive]?

espective of the answer to the first question, a taxable person within the meaning of Article 9 (1) of [the VAT Directive] who is established in another Member State and not in the Member State of refund is considered to be a taxable person in the within the meaning of Article 2 (1) of Directive [2008/9], even if it is registered for VAT purposes in the Member State of refund or does it have to register for VAT purposes?

view of the provisions of Directive [2008/9], the condition that the taxable person is not registered for VAT purposes in the Member State of refund constitutes an additional condition compared to that provided for in Article 3 of Directive [2008 / 9], which must be met in order for a taxable person established in another Member State who is not established in the Member State of refund to be entitled to a refund in a case such as this?

st Article 3 of Directive [2008/9] be interpreted as precluding a practice of a national administration from refusing to refund VAT on the ground that a condition laid down exclusively in national law has not been complied with? has been deposited? ”

Answer to the questions referred

First question

By its first question, the referring court asks essentially whether Article 17 (2) (g) of the VAT Directive is to be interpreted as meaning that the transfer by a taxable person of goods from a Member State to the Member State of refund is in view of the rental by that taxable person of these goods in the latter Member State, this should not be equated with an intra-Community supply.

As a preliminary point, it should be recalled that, according to settled case-law, for the interpretation of a provision of European Union law, account must be taken not only of its wording, but also of its context and of the objectives pursued by the scheme of which it forms part. (judgment of 19 April 2018, Firma Hans Bühler, C - 580/16, EU: C: 2018: 261, paragraph 33 and the case-law cited).

Under Article 17 (1) of the VAT Directive, in certain cases, namely the transfer of goods to another Member State, the transfer of goods is treated as an intra-Community supply.

Article 17 (2) of that directive lists a series of hypotheses which are not classified as transfers to another Member State within the meaning of Article 17 (1) of that directive.

Article 17 (2) of the VAT Directive contains an exhaustive list of exceptions and must therefore be interpreted narrowly (see, to that effect, judgment of 6 March 2014, Dresser-Rand, C - 606/12 and C - 607/12 , EU: C: 2014: 125, point 27).

In addition, when interpreting that provision, it must be borne in mind that the purpose of the transitional VAT regime applicable to intra-Community trade, introduced by the VAT Directive, is to transmit the tax revenue to the Member State where the final consumption of the delivered goods (see, to that effect, judgment of 6 March 2014, Dresser-Rand, C - 606/12 and C - 607/12, EU: C: 2014: 125, paragraph 28).

Article 17 (2) (g) of the VAT Directive, which deals in particular with the questions referred by the referring court, must be interpreted in the light of the foregoing considerations.

Under that provision, the transfer or transport of a good for the temporary use of that good within the territory of the Member State of arrival of the dispatch or transport for the purpose of transfer to another Member State is not to be regarded as services provided by the taxable person within the Member State of departure of the dispatch or transport of the well-established taxable person.

It follows from the wording of that provision that, for its application, the express cumulative conditions must be satisfied that, first, the use in the Member State of destination of the goods dispatched or transported for the services of the taxable person concerned is temporary and, second, that the goods are dispatched or transported from the Member State in which that taxable person is established.

First, therefore, it is apparent from that provision that, in accordance with the objectives of the transitional VAT regime applicable to intra-Community trade, only the transfer of goods to another Member State which is not intended for final consumption but for the temporary use of that goods in that Member State should not be classified as an intra-Community supply, provided that the other conditions are fulfilled (see, to that effect, judgment of 6 March 2014, Dresser-Rand, C - 606/12 and C - 607/12, EU: C : 2014: 125, point 30).

On the other hand, it would be contrary to both the spirit of Article 17 (2) (g) of the VAT Directive and the requirement of strict interpretation and the objectives of the transitional VAT regime applicable to intra-Community trade , in order to apply this provision also to cases where the good in question is used indefinitely or for an

extended period of time or in such a way that it is ultimately nullified.

Secondly, it should be noted that it is clear from the wording of Article 17 (2) (g) of the VAT Directive that the goods in question must have been dispatched or transported from the Member State in which the taxable person concerned is established. provision does not apply to situations where the goods in question have been dispatched or transported by the taxable person from Member States other than the one in which he is established.

In the present case, it is clear from the file submitted to the Court that the company established in Belgium has shipped or transported CHEP pallets to Romania and used them for services it has provided to CHEP Romania.

It is for the referring court to determine, on the basis of an overall assessment of all the circumstances of the main proceedings, whether the use of those pallets for the services provided by CHEP is temporary. To that end, it may in particular take into account the conditions of the lease contracts concluded between CHEP and CHEP Romania and the characteristics of the goods concerned.

Since the file available to the Court shows that CHEP has purchased pallets in several Member States of the Union, it is further for that court to ensure that the pallets in question are shipped from Belgium, the Member State in which CHEP is established, to Romania shipped or transported.

If the referring court considers that those two conditions are satisfied in the main proceedings, it must infer from them that, in accordance with Article 17 (2) (g) of the VAT Directive, the shipment of the pallets in question is not subject to an intra-Community delivery must be equated.

the other hand, if one or more of these conditions is not fulfilled for all or part of the pallets transferred, the shipment of the pallets concerned must, in accordance with Article 17 (1) of the VAT Directive, subject to verification of whether one of the other derogations referred to in paragraph 2 of that provision, to be assimilated to an intra-Community supply.

In the light of the foregoing, the answer to the first question must be that Article 17 (2) (g) of the VAT Directive must be interpreted as meaning that the transfer by a taxable person of goods from a Member State to the Member State of refund is for the purpose of the rental by that taxable person of these goods in the latter Member State, it should not be equated with an intra-Community supply where the use of those goods for those services is temporary and they are dispatched or transported from the Member State where that taxable person is established.

The second to fourth questions

By its second to fourth questions, which must be examined together, the referring court essentially asks whether the provisions of Directive 2008/9 should be interpreted as precluding a Member State from entering the territory of a taxable person established in another Member State refuses the right to a VAT refund simply because that taxable person is or should have been identified for VAT purposes in the Member State of refund.

Pursuant to Article 1 of Directive 2008/9, that directive seeks to lay down rules for the refund of VAT under Article 170 of the VAT Directive to taxable persons not established in the Member State of refund which fulfill the conditions laid down in Article 3 of Directive 2008 / 9 meet.

wever, Directive 2008/9 does not seek to determine the conditions of exercise and the extent of the right to a refund. The second paragraph of Article 5 of that directive provides that, without prejudice to Article 6 and for the purposes of the directive, the right to a refund of input tax is determined in accordance with the VAT directive, as applied in the Member State of refund (judgment of 21 March 2018, Volkswagen, C - 533/16, EU: C: 2018: 204, point 35).

Therefore, the right of a taxable person established in a Member State to receive a refund of the VAT paid in another Member State, as provided for in Directive 2008/9, is the counterpart of the right to deduct, in his favor, introduced by the VAT Directive, input tax paid in its own Member State (judgment of 21 March 2018, Volkswagen, C - 533/16, EU: C: 2018: 204, paragraph 36; see, to that effect, judgment of 28 June 2007, Planzer Luxembourg, C - 73 / 06, EU: C: 2007: 397, point 35).

In addition, the Court has emphasized that the right to a refund, like the right to deduct, is a basic principle of the common system of VAT introduced by the Union scheme, the aim of which is to relieve the trader entirely of all economic activities VAT due or paid. The common VAT system therefore ensures neutral taxation of all economic activities, irrespective of the objectives or results of those activities, provided that they are in principle themselves subject to VAT (judgment of 2 May 2019, Sea Chefs Cruise Services, C - 133 / 18, EU: C: 2019: 354, point 35).

The method of refunding VAT, in the form of a deduction or refund, depends on the place of establishment of the taxable person (see, to that effect, judgment of 16 July 2009, Commission v Italy, C - 244/08, not published , EU: C: 2009: 478, points 25 and 35). Thus, under the conditions laid down in Article 170 of the VAT Directive, 'a taxable person who, within the meaning of ... Articles 2 (1) and 3 of Directive [2008/9], is not established in the Member State in which he purchases goods and services or imports goods subject to VAT ', the right to a refund of VAT.

In that regard, a taxable person not established in the Member State of refund, within the meaning of Article 2 (1) of Directive 2008/9, is entitled, under Article 3 of that directive, to a refund of the VAT paid on two conditions. First, according to Article 3 (a) of that directive, during the refund period, the taxable person may not have had his place of business, a permanent establishment, or his residence or habitual residence in the Member State of refund. Secondly, according to Article 3 (b) of the same Directive, he must not have supplied goods or services in the same period which are deemed to be located in that Member State, except for points (i) and (ii) of that determination of said actions.

the other hand, neither Article 170 of the VAT Directive, nor Article 3 of Directive 2008/9, nor any other provision of those directives, makes the right of a taxable person established in another Member State to receive VAT refund subject to any formal condition that he is not identified for VAT purposes in the Member State of

refund or is not obliged to identify himself for VAT purposes there.

It follows that, under its national legislation, a Member State may not refuse to grant a taxable person established in another Member State the right to a refund of VAT on the sole ground that that taxable person is or should have been identified for VAT purposes in the first-mentioned Member State, even though that taxable person fulfills the cumulative conditions referred to in Article 3 of Directive 2008/9.

That interpretation is supported by the purpose of Directive 2008/9, which is to enable the taxable person established in another Member State to obtain a refund of input tax where, in the absence of taxable transactions in the Member State of refund, he is unable to deduct that input tax from VAT due at a later stage (judgment of 25 October 2012, Daimler and Widex, C - 318/11 and C - 319/11, EU: C: 2012: 666, paragraph 40). The fact that, where appropriate, a taxable person has been identified for VAT purposes in the Member State of refund cannot, in the national legal order, be validly construed as proof that that taxable person actually carried out such transactions in that Member State (see, to that effect, judgment of February 6, 2014, E.ON Global Commodities, C - 323/12, EU: C: 2014: 53,

This is all the more important since the VAT identification provided for in Article 214 of the VAT Directive is only a formal requirement for verification. It follows from settled case-law of the Court that formal requirements cannot affect, in particular, the right to deduct VAT, provided that the substantive conditions for those rights are met (see, to that effect, judgments of 21 October 2010, Nidera Handelscompagnie, C 385/09, EU: C: 2010: 627, paragraph 50, and 14 March 2013, Ablessio, C - 527/11, EU: C: 2013: 168, paragraph 32). It also follows from paragraph 52 of this judgment that a taxable person established in another Member State, in so far as the substantive conditions for the right to a refund are fulfilled,

Contrary to the submissions of the Romanian Government, a Member State cannot therefore exclude a taxable person established in another Member State from the right to a refund of VAT on the sole ground that that taxable person is or should have been identified for VAT purposes in the first-mentioned Member State.

In addition, it is important to add that only Article 171a of the VAT Directive allows Member States to grant a taxable person established in another Member State the right to deduct, in respect of the transactions specifically referred to in that article, whereby he is excluded from the refund procedure under Directive 2008/9. However, in addition to the fact that the Romanian Government has in no way transposed this possibility into Romanian law, this provision does not in any event aim to distinguish between taxable persons according to whether or not they have been identified for VAT purposes in the Member State of refund.

In the present case, it is apparent from the file before the Court that, as a taxable person established in another Member State, CHEP does not fulfill any of the criteria for a link with Romanian territory referred to in Article 3 (a) of Directive 2008/9. As regards the condition laid down in Article 3 (a) of this Directive, it is further apparent from the information in the file that, by renting the pallets in question to CHEP Romania, CHEP provides services whose place is provided in accordance with Article 44 of the VAT Directive. deemed to be located in Romania, but it is CHEP Romania that under Article 196 of the VAT Directive must pay VAT in accordance with the reverse charge mechanism. Therefore, and subject to verification by the referring court,

In the light of the foregoing, the answer to the second to fourth questions must be that the provisions of Directive 2008/9 must be interpreted as precluding the opposition by a Member State to a taxable person entitled to a refund established in the territory of another Member State of VAT refuses on the sole ground that this taxable person is or should have been identified for VAT purposes in the Member State of refund.

Cost

As regards the parties to the main proceedings, the proceedings are to be regarded as an incident arising there, so that the referring court has to decide on the costs. Costs incurred by others for submitting their observations to the Court are not recoverable.

The Court (Ninth Chamber) hereby rules:

Article 17 (2) (g) of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8 / EC of 12 February 2008, it should be interpreted as meaning that the transfer by a taxable person of goods from a Member State to the Member State of refund for the lease by that taxable person of those goods in the latter Member State should not be treated as an intra-Community supply if the use of these goods for those services is temporary and they are dispatched or transported from the Member State in which that taxable person is established.

The provisions of Council Directive 2008/9 / EC of 12 February 2008 laying down detailed rules for the refund of value added tax, laid down in Directive 2006/112 / EC, to taxable persons not resident in the Member State of refund but are established in another Member State, they must be interpreted as precluding a Member State from denying a taxable person established in the territory of another Member State a right to a refund of value added tax on the sole ground that that taxable person Member State of refund for value added tax has been or should have been identified.

signatures

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* Language of the case: Romanian.