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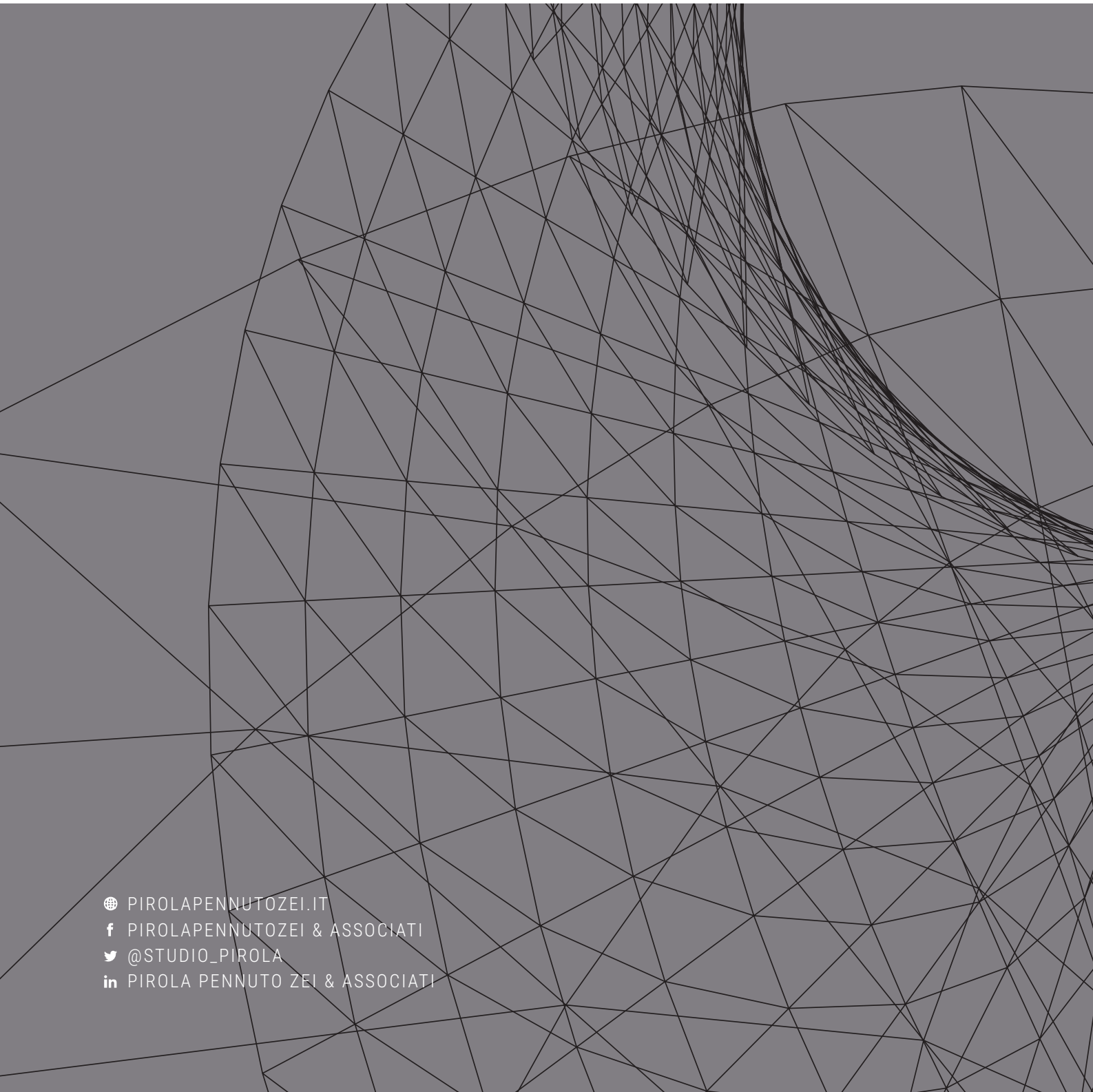
EUROPEAN

NEWSLETTER / APRIL 2019



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EUROPEAN COURT OF JUSTICE

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1.1

Reference for a preliminary ruling — Directive 2006/112/EC — Value added tax (VAT) — Enforcement — Fees laid down by law — Administrative practice of the competent national authorities considering those fees to be inclusive of VAT — Principles of neutrality and proportionality. Decision dated 10 April 2019, Case C-214/18, H.W. and *PSM «K», Aleksandra Treder*

This request for a preliminary ruling concerns the interpretation of Article 1,(a) and (c), Article 73 and the first paragraph of Article 78 of Council Directive 2013/43/EU of 22 July 2013 and has been made in proceedings brought by H. W. concerning the decision of Mrs. *Aleksandra Treder,* the court enforcement officer responsible for carrying out enforcement proceedings against him, to add value added tax (VAT) to the enforcement fees concerned.

The European Court of Justice has declared that "*that the provisions of Directive 2006/112 and the principles of neutrality of VAT and proportionality must be interpreted as not precluding an administrative practice of the competent national authorities, such as that at issue in the main proceedings, under which the VAT relating to supplies of services by a court enforcement officer in an enforcement procedure is regarded as included in the fees charged by that officer*".

1.2

Reference for a preliminary ruling — Taxation — Common system of value added tax — Directive 2006/112/EC — Right to deduct value added tax (VAT) paid as input tax — Article 199(1)(a) — Reverse charge procedure — Undue payment of the tax by the recipient of services to the suppliers on the basis of an invoice drawn up incorrectly according to the rules on ordinary taxation — Tax authority's decision holding that the recipient of services has an outstanding tax liability and refusing a claim for deduction — No examination by the tax authority of the possibility of reimbursement of the tax. Decision dated 11 April 2019, Case C-691/17, *PORR Építési Kft.* vs. *Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, and the principles of fiscal neutrality and effectiveness must be interpreted as not precluding a practice of the tax authority whereby, in the absence of any suspicion of tax evasion, that authority refuses an undertaking the right to deduct the value added

tax which that undertaking, as the recipient of services, unduly paid to the supplier of those services on the basis of an invoice drawn up by that supplier in accordance with the rules on the ordinary value added tax (VAT) regime, whereas the relevant transaction fell under the reverse charge mechanism, and where the tax authority did not, examine, prior to refusing the right to deduct, whether the issuer of that incorrect invoice could reimburse the recipient of the invoice the amount of VAT unduly paid and could correct that invoice under a self-correction procedure, in accordance with the applicable national rules, in order to recover the tax which it unduly paid to the Treasury, or itself decide to reimburse the recipient of that invoice the tax which the recipient unduly paid to the issuer of the invoice and that the latter, subsequently, unduly paid to the Treasury.
Those principles require, however, in the situation where the reimbursement by the supplier of services to the recipient of those services of the VAT unduly invoiced would be impossible or excessively difficult, in particular in the case of the insolvency of the supplier, that the recipient of the services must be able to address its application for reimbursement to the tax authorities directly.

This request for a preliminary ruling concerns the interpretation of VAT Directive and of the principles of proportionality, fiscal neutrality and effectiveness and has been made in proceedings between PORR *Építési Kft.* ('*PORR*') and the *Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (Appeals Directorate of the National Taxation and Customs Authority, Hungary) and concerning a tax adjustment imposed on the former on account of a failure to apply the national provisions in relation to procedure for the reverse charging of VAT.

The European Court of Justice has commented on the right of deduction forms an integral part of the VAT scheme and in principle may not be limited (see judgments *Pannon Gép Centrum* and *Farkas*). The common system of VAT therefore ensures that all economic activities, whatever their purpose or results, provided that they are, in principle, themselves subject to VAT, are taxed in a neutral way (see judgment of *Abbey National*). As regards the rules governing the exercise of the right to deduct VAT in the reverse charge procedure under Article 199(1) of Directive 2006/112, a taxable person which is liable as the recipient of a service for the VAT relating thereto is not obliged to hold an invoice drawn up in accordance with the formal requirements of that directive in order to be able to exercise its right to deduct, and "*only has to fulfil the formalities laid down by the Member State concerned in the exercise of the option conferred by Article 178(f) of that directive (see, to that effect, judgment of 26 April 2017, Farkas, C 564/15, EU:C:2017:302, paragraph 44 and the case-law cited*)".

The Court has pointed out that a system in which, first, the supplier of services which has paid the VAT to the tax authorities in error may seek to be reimbursed and, secondly, the recipient of those services may bring a civil law action against that supplier for recovery of the sums paid but not due observes the principles of neutrality and effectiveness. Such a system enables that recipient, which bore the tax invoiced in error, to obtain reimbursement of the sums unduly paid (see judgment *Reemtsma Cigarettenfabriken*).

Moreover, *"in a situation where the VAT has actually been paid to the Treasury by the supplier of the services, the reimbursement of the VAT by the supplier to the recipient of the services is impossible or excessively difficult, in particular in the case of the insolvency of that supplier of services, the principle of effectiveness may require that the recipient of the services concerned be able to address its application for reimbursement to the tax authorities directly. In such a case, the Member States must provide for the instruments and the detailed procedural rules necessary to enable that recipient of services to recover the unduly invoiced tax in order to respect the principle of effectiveness (see, to that effect, judgment of 26 April 2017, Farkas, C-564/15, EU:C:2017:302, par. 53)"*.

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EUROPEAN TAX NEWSLETTER | APRIL 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 APRIL 2019.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM