Case C-308/25

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

26 March 2025

Referring court:

Corte di Giustizia Tributaria di secondo grado della Lombardia – Milano (Italy)

Date of the decision to refer:

7 February 2025

Defendant at first instance and appellant:

Agenzia delle Entrate – Direzione Provinciale di Bergamo

Applicant at first instance and respondent:

Isolanti Group Srl

Subject matter of the main proceedings

Appeal before the referring court by the Agenzia delle entrate (Italian Revenue Agency) against judgment No 172/2022 of the Commissione tributaria provinciale di Bergamo (Bergamo Provincial Tax Court). That judgment upheld the action brought by the applicant at first instance against a measure imposed by the Revenue Agency requiring that that party pay tax debts relating to VAT.

Subject matter and legal basis of the request

Interpretation of European Union law and, in particular, Article 4(3) TEU, Articles 250 and 273 of Directive 2006/112/EC, Articles 2 and 22 of Directive 77/388/EEC, the principles of fiscal neutrality and proportionality, and the notion of the proper functioning of the common system of VAT, in order to establish whether national legislation such as that in question, which allows for the simplified resolution of pending disputes relating to VAT applied to intra-Community transactions, complies with that law. This simplified resolution

involves the extinguishing of the tax debts owed by taxpayers through, in particular, the payment of amounts lower than the total amount of those debts.

Questions referred for a preliminary ruling

‘- Do Article 4(3) TEU and Articles 250 and 273 of Directive 2006/112/EC (or the analogous Articles 2 and 22 of Directive 77/388/EEC) preclude the national legislation laid down in Article 1(193)(a) of legge 197 del 2022 (Law No 197/2022), in so far as it excludes from the mechanism of simplified resolution only disputes concerning [even] only partially the VAT levied on imports and not also those concerning even only partially [EU] VAT or VAT provided for by EU law, for which the simplified resolution of disputes is instead permitted?;

- Do the principle of fiscal neutrality and the proper functioning of the common system of value added tax preclude the national legislation laid down in Article 1(193)(a) of Law No 197/2022 in so far as it – illogically or otherwise in a discriminatory manner – excludes from the mechanism of simplified resolution only disputes concerning the VAT levied on imports and not also those concerning even only partially [EU] VAT or VAT provided for by EU law, for which the simplified resolution of disputes is instead permitted, taking into account also the principle referred to in Article 4(3) TEU with which national rules and practices must comply?;

- Is the mechanism of simplified resolution laid down in the abovementioned national legislation, even if considered compatible with EU law, contrary to the general principle of proportionality, in so far as it could result in a benefit for the private taxpayer of up to 95% of the unpaid tax and, consequently, an economic loss for the State budget, which is also significant from the point of view of EU law?’

Provisions of European Union law relied on

TEU, and in particular Article 4(3);

Charter of Fundamental Rights of the European Union, and in particular Article 47;

Directive 77/388/EEC, and in particular Articles 2 and 22;

Council Decision 2007/436, and in particular Article 2(1);

Directive 2006/112/EC, and in particular recital 8 and Articles 2(1), 206, 250(1), 252 and 273;

Directive 2018/1695/EU, and in particular recital 1.

European Union case-law relied on

Judgments of the Court of Justice of the European Union of 28 September 2006, *Commission* v *Austria*, C-128/05, EU:C:2006:612; of 17 July 2008, *Commission* v *Italy*, C-132/06, EU:C:2008:412; of 11 December 2008, *Commission* v *Italy*, C-174/07, EU:C:2008:704; of 29 March 2012, *Belvedere Costruzioni*, C-500/10, EU:C:2012:186; of 7 April 2016, *Degano Trasporti*, C-546/14, EU:C:2016:206; of 17 October 2019, *Elektrorazpredelenie Yug*, C-31/18, EU:C:2019:868; of 7 July 2022, *F. Hoffmann-La Roche and Others*, C-261/21, EU:C:2022:534; of 22 December 2022, *Shell Deutschland Oil*, C-553/21, EU:C:2022:1030; and of 15 June 2023, *Bank M. (Consequences of the annulment of the contact)*, C-520/21, EU:C:2023:478;

Orders of the Court of Justice of the European Union of 10 January 2022, *ZI and TQ*, C-437/20, EU:C:2022:53, and of 1 July 2021, *Tolnatext*, C-636/20, EU:C:2021:538;

Provisions of national law relied on

Decreto-legge del 25 marzo 2010, n. 40 – Disposizioni urgenti tributarie e finanziarie in materia di contrasto alle frodi fiscali internazionali e nazionali operate, tra l'altro, nella forma dei cosiddetti 'caroselli' e 'cartiere', di potenziamento e razionalizzazione della riscossione tributaria anche in adeguamento alla normativa comunitaria, di destinazione dei gettiti recuperati al finanziamento di un Fondo per incentivi e sostegno della domanda in particolari settori (Decree-Law No 40 of 25 March 2010 – Urgent tax and financial provisions to combat international and national tax fraud carried out, among other things, in the form of 'carousels' and 'shell companies', to strengthen and rationalise tax collection, where applicable in accordance with EU legislation, and to allocate the recovered revenues to the financing of a fund for incentives and support of demand in particular sectors);

Legge del 29 dicembre 2022, n. 197 – Bilancio di previsione dello Stato per l'anno finanziario 2023 e bilancio pluriennale per il triennio 2023-2025 (Law No 197 of 29 December 2022 – State Budget for the 2023 financial year and multi-year budget for the three-year period 2023-2025), and in particular Article 1, which states as follows:

'186. Disputes before the tax courts in which the Revenue Agency or the Agenzia delle dogane e dei monopoli (Customs and Monopolies Agency) is a party, pending at any stage or level of proceedings, including those before the Corte di cassazione (Supreme Court of Cassation), even following referral of a case back to a lower court, on the date on which this law enters into force, may be resolved, at the request of the party lodging the application initiating proceedings or of the party that has taken over or has standing to do so, by means of payment of an amount equal to the value of the dispute. The value of the dispute shall be

established in accordance with Article 12(2) of decreto legislativo 31 dicembre 1992, n. 546 (Legislative Decree No 546 of 31 December 1992).

187. In the case of an action pending at first instance, a dispute can be resolved by means of payment of 90% of the value of that dispute.

188. Notwithstanding the provisions of paragraph 186, if the competent tax office is the losing party in the final or only non-interim judgment given on the date on which this law enters into force, disputes may be resolved by means of payment of: a) 40% of the value of the dispute in the event of an unfavourable judgment at first instance; or b) 15% of the value of the dispute in the event of an unfavourable judgment at second instance.

189. If an action is partially upheld or in any case in the event of a shared defeat between the taxpayer and the competent tax office, the amount of the tax, net of interest and any penalties, shall be payable in full in relation to the portion of the proceedings confirmed by the court judgment and at a reduced rate, according to the provisions of paragraph 188, in relation to the portion of the proceedings annulled.

190. Tax disputes pending before the Supreme Court of Cassation in which the competent tax office has been unsuccessful at all previous levels of proceedings can be resolved by means of payment of an amount equal to 5% of the value of the dispute.

…

192. The simplified resolution mechanism shall apply to disputes in which notice of the action at first instance was served on the opposing party by the date on which this law enters into force and for which the process has not been concluded with a final judgment by the date of submission of the request referred to in paragraph 186.

193. Disputes concerning the following – even only in part – shall be excluded from the simplified resolution mechanism:

a) traditional own resources as provided for in Article 2(1)(a) of Council Decisions 2007/436/EC, Euratom of 7 June 2007, 2014/335/EU, Euratom of 26 May 2014, and 2020/2053/EU, Euratom of 14 December 2020, and the value added tax levied on imports;

b) sums due as recovery of State aid under Article 16 of Council Regulation (EU) 2015/1589 of 13 July 2015.

194. The simplified resolution mechanism shall be implemented through the submission of the request referred to in paragraph 195 and payment of the amounts due in accordance with paragraphs 186 to 191 by 30 September 2023 …

The offsetting permitted under Article 17 of decreto legislativo 9 luglio 1997, n. 241 (Legislative Decree No 241 of 9 July 1997) shall be excluded. ...

...

197. Disputes that can be resolved shall not be suspended, unless the taxpayer makes a specific request to the judge to that effect, stating that it wishes to avail itself of the simplified resolution mechanism. In this case the process shall be suspended until 10 October 2023 and the taxpayer must file a copy of the request for resolution and payment of the amounts due or of the first instalment of those amounts, by the same date, with the court before which the dispute is pending.

198. In disputes pending at any stage and level of proceedings, if a copy of a request is filed in accordance with the second sentence of paragraph 197, the process shall be declared concluded by order of the president of the division or by order in chambers if a date for the decision has been set. The costs of the process shall be borne by the party that has advanced them.

...

200. Any refusal of a simplified resolution must be notified by 30 September 2024 in accordance with the procedures for the service of procedural documents. Such refusals may be challenged within sixty days of notification before the court in which the dispute is pending. ...'.

National case-law relied on

Judgments of the Supreme Court of Cassation, judgments Nos 3673 and 3676 of the Combined Civil Chambers of 17 February 2010; judgment No 19333 of the Tax Chamber of 22 September 2011.

Succinct presentation of the facts and procedure in the main proceedings

1 According to the referring court, following audits by the Revenue Agency, that agency found that the undertaking Bergamo Isolanti, subsequently incorporated into Isolanti Group, had benefited from infringements committed by a third company (which, acting as a 'shell company', had issued false invoices) and that it was therefore required to pay certain tax debts arising from the application of VAT.

2 On this issue, the Revenue Agency served Isolanti Group on 24 March 2021 with a notice of assessment demanding payment of the abovementioned tax debts along with interest and penalties.

3 By an application served on 19 May 2021, Isolanti Group brought an action against the abovementioned notice of assessment before the Bergamo Provincial

Tax Court, requesting its cancellation. That court upheld the action, delivering judgment No 172/2022 cancelling the contested notice.

4 The Revenue Agency appealed that judgment before the Corte di giustizia tributaria di secondo grado della Lombardia (Tax Court of Appeal, Lombardy, Italy), the referring court.

5 On 3 August 2023, Isolanti Group filed a motion to suspend the dispute under Article 1(197) of Law No 197/2022 and also filed a request for simplified resolution of the tax dispute in question under Article 1(186) to (202) of that law.

6 In a court submission of 24 April 2024, the Revenue Agency advised that the abovementioned request for resolution had been accepted and that the dispute could therefore be declared concluded.

The essential arguments of the parties in the main proceedings

7 In May 2024, the referring court, having doubts as to whether the simplified dispute resolution mechanism laid down in Law No 197/2022 was compatible with EU law, invited the parties to file briefs on the matter.

8 The Revenue Agency contends that the finding of the Court of Justice of the European Union in its judgment in Case C-132/06, according to which the provisions relating to VAT amnesties do not comply with EU law, does not concern the resolution of pending disputes, such as that provided for in Article 1 of Law No 197/2022, in that it does not constitute a waiver of the recovery of tax credits.

9 Italian case-law has recognised the lawfulness of the provisions of legge n. 289/2002 (Law No 289/2002) relating to the simplified resolution of pending disputes regarding VAT, based on the argument that those provisions do not constitute a general waiver of VAT recovery, but rather contain rules aimed at reducing ongoing disputes and collecting uncertain debts.

10 The respondent company believes that the matter in dispute should be declared closed, as jointly requested by the parties.

11 Moreover, provisions concerning the resolution of pending disputes similar to those laid down in Law No 289/2002 have been introduced into national legislation for over a decade, without infringement proceedings having been initiated in this regard by the Union’s institutions.

Succinct presentation of the reasoning in the request for a preliminary ruling

12 First, the referring court has doubts as to whether the provisions concerning the simplified resolution of tax disputes under Law No 197/2022 comply with EU law, particularly with regard to Article 1(193(a) of that law, in so far as it excludes

simplified resolution in disputes concerning VAT levied on imports of goods from non-EU countries, while permitting such a resolution for disputes concerning VAT on transactions carried out between taxpayers established in Member States.

13 Based on the provisions of Directive 2006/112/EC and Article 4(3) TEU, each Member State has an obligation to adopt all legislative and administrative measures to ensure that VAT is collected in full within its territory and to avoid budgetary losses and damage to the internal market resulting from tax fraud.

14 According to the referring court, the rules laid down in Directive 2006/112/EC reproduce the content of Articles 2 and 22 of Directive 77/388/EEC (the Sixth VAT Directive). Under recital 66 of Directive 2006/112/EC, Member States are required to implement the provisions of previous directives, such as Directive 77/388/EEC, that have the same content as the rules of Directive 2006/112/EC. Consequently, the referring court believes that the principles established in the judgment in Case C-132/06 apply to the case at hand.

15 Second, the referring court has doubts as to whether the provisions of Law No 197/2022 are compatible with the Member State's obligations to ensure effective collection of VAT and the integrity of the Union's budget revenue. In particular, the court wonders whether Article 1(193)(a) of that law implies a general waiver by the Member State of its right to recover tax credits in the sense described in the judgment in case C-132/06.

16 The simplified resolution of a tax dispute in accordance with Article 1 of Law No 197/2022 would result in that dispute being automatically concluded, which would imply that the amount of VAT collected is lower than the amount provided for by the general VAT regime. The extinguishing of a VAT tax debt by means of the payment of an amount that is lower than the amount of the debt would be contrary to the general principle of proportionality, in that the reduction in the VAT collected would cause the Member State a loss that is disproportionate to the benefit enjoyed by the taxpayer concerned.

17 The referring court recalls that the provisions of the VAT directives must be interpreted in accordance with the principle of fiscal neutrality, according to which economic operators carrying out the same transactions must not be treated differently with regard to the collection of VAT. It would appear from the judgment in case C-132/06 that a rule providing for the extinguishing of tax debts by means of payment of sums significantly lower than those debts is very similar to a tax exemption and infringes the principle of fiscal neutrality, in that it introduces significant differences in the treatment of taxpayers.

18 Therefore, the referring court believes that the simplified resolution of disputes regarding VAT for intra-Community transactions could involve an infringement of the obligation of the Italian Republic to guarantee the collection of VAT in full within its territory and the effective collection of the Union's own resources, as well as the principle of fiscal neutrality and equal treatment of taxpayers. On this

point, the court recalls that, according to Council Decision 2007/436/EC, the Union's own resources include revenue from applying a uniform rate to the harmonised VAT assessment bases, and thus any reduction in the VAT collected by a Member State could involve a reduction in those resources.

19 Furthermore, in this case, Italian legislation would be favouring taxpayers responsible for fraud, which would be contrary to the objective of combating tax fraud pursued by the Union.

20 According to the referring court, although the Member States enjoy a certain freedom in order to ensure that taxpayers fulfil their tax obligations, that freedom is limited by the obligation to ensure that the Union's own resources – including VAT – are effectively collected, and the obligation to avoid creating significant differences in the treatment of taxpayers.

21 The referring court notes that EU case-law has already examined a previous Italian law, namely Law No 289/2002, which introduced a tax amnesty involving a waiver by the Member State of the assessment and collection of VAT. More specifically, the judgment in case C-132/06 appears to show that a tax amnesty of this nature is incompatible with the obligations arising from Directive 77/388/EEC, conflicts with Directive 2006/112/EC, and compromises the application of VAT and the guarantees that the Union's own resources will be collected.

22 On the other hand, Italian case-law holds that the judgment in case C-132/06 does not imply incompatibility with EU law of provisions, such as those at issue in the main proceedings, that permit the resolution of pending tax disputes, since such provisions do not entail a waiver by the Member State of the recovery of the tax, but rather aim to put an end to an ongoing dispute, the outcome of which is always uncertain, and pursue the aim of reducing tax disputes.

23 On the one hand, the parties in the main proceedings argue that the Italian case-law referred to in the previous paragraph should be applied to the case in question, so that the simplified resolution of the dispute concerned can take place. On the other hand, the referring court believes that this case-law conflicts with EU law.

24 On this point, the referring court points out that it is true that the judgment of the Court of Justice of the European Union in case C-500/10 established that an Italian law concerning the simplified resolution of tax disputes, namely decreto-legge n. 40/2010 (Decree-Law No 40/2010), complies with EU law. That law provided, in particular, for the automatic conclusion of tax disputes pending at third instance, if those disputes originated in actions brought at first instance more than ten years before the law in question entered into force and if the financial authorities in the Italian Republic had been unsuccessful at first and second instance in the proceedings.

25 However, as was stated in the judgement in case C-500/10, Decree-Law No 40/2010 was deemed compliant with EU law on the basis of its exceptional

nature, its limited scope of application and the principle that the obligation of Member States to ensure the effective collection of EU resources cannot conflict with compliance with a reasonable time limit. This would not be the case with the simplified resolution mechanism introduced by Law No 197/2022, as that mechanism applies indiscriminately to all tax disputes pending at any level of proceedings, regardless of the duration of those proceedings. It follows that the principle stated in the judgement in case C-500/10 is not applicable in the case at hand.

26 According to the referring court, the simplified resolution mechanism laid down in Law No 197/2022 does not constitute an exceptional measure aimed at addressing limited, highly critical situations, but rather a measure that follows a trend in Italian tax legislation of favouring less scrupulous taxpayers.

27 In fact, in the opinion of the referring court, the legislative interventions on tax matters in recent years, characterised by multiple amnesties, have the effect of leading taxpayers to consider that future amnesty measures are likely, and they are therefore induced to contest their tax debts in court in order to benefit from such measures. In this case, the simplified resolution introduced by Law No 197/2022 guarantees beneficiaries not only that their tax debts will be extinguished through payment of lower amounts, but also that extended payment terms will be granted for those debts and that financial penalties resulting from tax violations will be cancelled.

28 Third, the referring court observes that Article 1(193)(a) of Law No 197/2022 excludes from the simplified resolution mechanism disputes concerning VAT levied on imports of goods from non-EU countries. According to the referring court, EU law excludes the simplified resolution of such disputes so as not to favour the purchase of foreign goods to the detriment of those originating within the EU, which would cause damage to free competition in the internal market, the EU budget and the national budget.

29 Since it appears from Article 1(193)(a) of Law No 197/2022 that the simplified resolution of disputes concerning VAT levied on imports of goods from non-EU countries does not comply with EU law, the referring court states that the simplified resolution of disputes concerning VAT applied to intra-Community transactions is also contrary to EU law, since in both cases it is necessary to guarantee competition in the internal market and safeguard the resources of the Union.

30 Finally, the referring court observes that although the Revenue Agency – the appellant – challenged the judgement at first instance, it subsequently accepted the request for simplified resolution of the dispute and asked, with the opposing party, for the main proceedings to be concluded in accordance with Law No 197/2022. Such a withdrawal from the dispute on the part of the appellant breaches that party’s duty to disapply national rules that are contrary to EU law. It follows that, if the Court of Justice of the European Union recognises the merits of the

questions referred for a preliminary ruling by the referring court, the Italian tax authorities should no longer process requests for simplified resolution of disputes concerning VAT, but should rather continue with pending disputes with a view to their resolution.