

**Judgment of the Court (Fourth Chamber) of 26 April 2017 (request for a preliminary ruling from the
Kecskeméti közigazgatási és munkaügyi bíróság — Hungry) — Tibor Farkas v Nemzeti Adó- és
Vámhivatal Dél-alföldi Regionális Adó Főigazgatósága**

(Case C-564/15) ⁽¹⁾

(Reference for a preliminary ruling — Plea alleging infringement of EU law raised by the Court of its own motion — Principles of equivalence and effectiveness — Common system of value added tax — Directive 2006/112/EC — Right to deduct input tax — Reverse charge system — Article 199(1)(g) — Application only in the case of immovable property — Undue payment of the tax by the purchaser of property to the seller as a result of an incorrectly drawn up invoice — Tax authority's decision holding that the property purchaser has an outstanding tax liability, refusing payment of the deduction sought by the purchaser, and imposing a penalty tax)

(2017/C 195/03)

Language of the case: Hungarian

Referring court

Kecskeméti közigazgatási és munkaügyi bíróság

Parties to the main proceedings

Applicant: Tibor Farkas

Defendant: Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó Főigazgatósága

Operative part of the judgment

1. Article 199(1)(g) of 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, must be interpreted to the effect that it applies to the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.
2. The provisions of Directive 2006/112, as amended by Directive 2010/45, and the principles of fiscal neutrality, effectiveness and proportionality must be interpreted to the effect that, in a situation such as that in the main proceedings, they do not preclude the purchaser of an item of property from being deprived of the right to deduct the value added tax which he paid to the seller when that tax was not due, on the basis of an invoice drawn up in accordance with the rules of the ordinary value added tax regime, where the relevant transaction came under the reverse charge mechanism, and the seller paid that tax to the Treasury. However, to the extent that reimbursement of the unduly invoiced value added tax by the seller to the purchaser becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, those principles require that the purchaser be able to address his application for reimbursement to the tax authority directly.
3. The principle of proportionality must be interpreted to the effect that it precludes national tax authorities, in a situation such as that in the main proceedings, from imposing on a taxable person, who purchased an item of property the transfer of which comes under the reverse charge regime, a tax penalty of 50 % of the amount of value added tax which he is required to pay to the tax authority, where those authorities suffered no loss of tax revenue and there is no evidence of tax evasion, this being a matter for the referring court to determine.

⁽¹⁾ OJ C 90, 7.3.2016.