

October 2020

## CJEU's judgment to extend the scope of application of bad-debt relief in VAT

**On 15 October 2020, the Court of Justice of the European Union delivered a judgment in Case C-335/19: E. Sp. z o.o. Sp. k. vs Polish Supreme Administrative Court, in which it assessed the compatibility of the Polish legislation on the VAT bad-debt relief with EU law.**

**CJEU ruled that the Polish legislation which makes the reduction of the VAT taxable amount subject to the condition that, on the day of the delivery of the goods or provision of the services and on the day preceding that on which the adjusted tax return seeking that reduction is filed, the debtor is still registered as a taxable person for the purposes of VAT and is not subject to insolvency or winding up proceedings and that, on the day preceding that on which the adjusted tax return is filed, the creditor is itself still registered as a taxable person for the purposes of VAT is incompatible with the provisions of EU VAT Directive.**

**This opens up the opportunity to recover VAT on outstanding debts, especially in situations where debtors are subject to insolvency or liquidation proceedings.**

### Background

The case at hand concerned the assessment of compatibility of the Polish regulations on bad-debt relief with the EU law.

Under the Polish VAT Act, the bad-debt relief may be applied, provided that, at the time of sale or on the day preceding that on which the adjusted tax return is filed:

- the debtor is not subject to bankruptcy or liquidation proceedings;
- both the debtor and the creditor are taxable persons for the purposes of VAT (for creditors, the requirement of being a taxable person for VAT purposes must be met on the day preceding that on which the adjusted tax return is filed).

The issue of compliance of the above provisions with EU law has been the subject of dispute between taxpayers and the Polish tax authorities for years. In December 2018, in one of related cases, the Polish Supreme Administrative Court inquired the Court of Justice of the European Union whether the provisions of Council Directive 2006/112/EC permit the introduction into national law of a restriction on the application of the bad-debt relief if the debtors are, among others, subject to insolvency or liquidation proceedings.

### CJEU's ruling

The Court upheld the opinion of the Advocate-General of CJEU, issued on 4 June 2020, and stated that provisions which make the reduction of the VAT taxable amount subject to the condition that the debtor is registered as a taxable person for the purposes of VAT and

is not the subject of insolvency or winding-up proceedings are contrary to EU law.

It noted that the regulations providing for the possibility of reducing the VAT taxable amount by the creditor are interlinked with provisions imposing on the debtor the requirement to adjust the amount of VAT deductible in the event they have not settled their debt.

However, in the Court's opinion, the right to adjust the VAT taxable amount and the obligation to adjust the amount of VAT deductible do not depend on whether both the creditor and the debtor retain their status as taxable persons.

Moreover, the Court pointed to the fact that Article 89a(1a) of the Polish VAT Act specifically lays down a temporal criterion at the end of which the debt is considered to be likely to be irrecoverable (currently: 90 days) and, secondly, that, under Article 89a(4) of that Act, the creditor must increase the taxable amount and the amount of VAT payable when, following the reduction in the taxable amount, the debt is eventually settled or assigned. Thus, in the Court's assessment, read together, those provisions in themselves constitute an appropriate measure which satisfies the requirements of the principle of proportionality. However, making the right to apply the bad-debt relief dependent on the debtor's status (especially them being taxable persons for the purposes of VAT or the object of bankruptcy proceedings) is unacceptable.

As a result, the Court ruled that the taxpayer has the right to set aside those provisions of the Polish VAT Act which do not comply with the EU law and may, relying directly on EU legislation, apply the bad-debt relief to VAT.

### Implications

The CJEU's judgment opens up the opportunity to recover VAT on outstanding debts in situations where debtors are subject

to insolvency or liquidation proceedings.

Furthermore, the judgment delivered by CJEU may be regarded as a chance to apply the bad-debt relief in situations where the Polish provisions make it dependent on the debtor's status (this applies especially to non-taxable individuals, e.g. natural persons not conducting economic activity).

Please be reminded that until the end of 2020 it is possible to submit retrospective overpayment applications reaching back to December 2014. Therefore, we encourage you to take appropriate action as soon as possible.

If you would like to learn more about the ways we can assist you, please do not hesitate to contact us at: [mampytanie@kpmg.pl](mailto:mampytanie@kpmg.pl)

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