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Tax Alert

KPMG in Poland

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CJEU pronounced itself on the issue of exercising the right to deduct VAT on intra-Community acquisitions of goods

On 18 March 2021, the Court of Justice of the European Union issued a preliminary ruling at the request of the District Administrative Court in Gliwice, submitted by way of decision dated 4 November 2019, case file I SA/Gl 495/19, concerning doubts as to whether tax authorities may demand default interest when the taxpayer, through the fault of the supplier, declares VAT on intra-Community acquisition of goods after three months following the month in which the transaction was carried out.

CJEU confirmed that the provisions of the EU VAT Directive are to be interpreted as precluding national legislation which makes the exercise of a taxable person's right to deduct input tax in the same accounting period as that in which the tax due was payable on the transaction subject to the tax due on those transactions being entered in the appropriate tax declaration submitted within three months following the end of the month in which the tax liability arose.

The key conclusions of the ruling can be found below.

Amendments to the VAT Act

Amendments to the VAT Act which entered into force in 2017 came with many doubts as to their consistency with the EU principles of VAT neutrality and proportionality, under which, inter alia, through using the right to deduct input tax, a VAT payer should be relieved of the economic burden thereof. In principle, for intra-Community acquisitions of goods or supply of services, the obligation to settle the input and output tax rests with the purchaser. For the purchaser, the output tax is at the same time the input tax to be deducted, which consequently means that from the purchaser's point of view the transaction becomes tax neutral.

Yet, under the amended VAT provisions, the right to deduct the amount of input tax from the amount of tax due shall arise only when the VAT payer includes the output tax for such transactions in a return no later than three months following the month in which the tax liability arose in relation to the acquired goods or services.

Thus, in their current wording, Polish VAT provisions provide for postponement of the moment in which the right to deduction arises, thus burdening taxpayers with penalty interests in situations where their foreign contractor provides them with the invoice recording the acquisition later than three months following the month in which the tax liability arose.

Request for a preliminary ruling

The issue to which the request for a preliminary ruling submitted by the DAC in Gliwice pertained related to a Dutch company making ICAs in the territory of Poland.

The company was of the opinion that, as a result of an adjustment to a VAT declaration submitted for the period in which the tax liability arose, it may deduct input tax paid on the intra-Community acquisition of goods in the same accounting period in which the tax due was included, even if the adjustment was not made within three months following the month in which the tax liability arose in relation to the acquired goods.

In principle, the right to deduct the amount of input tax from the amount of tax due arises in the same accounting period as that in which the tax liability arose in relation to the acquired goods or services. However, enjoyment of those rules is contingent on submitting a declaration within a three-month period. Where the period is exceeded, the taxable person must adjust the declaration submitted previously and at the same time may pay the tax due on the intra-Community acquisition of goods only on an ongoing basis.

As part of the pending proceedings, the District Administrative Court in Gliwice has decided to refer a question to the Court of Justice for a preliminary ruling. According to DAC, it is of key importance to determine whether the 3-month period provided for by the Polish VAT regulatory framework is in line with the principle of proportionality and whether the limitation resulting thereof does not infringe the tax neutrality principle.

CJEU's ruling

According to the ruling issued by CJEU, Polish provisions in this regard go against the EU VAT Directive.

CJEU concluded that the provisions of the VAT Directive do not preclude the possibility of a Member State introducing mandatory limitation periods for making VAT deductions into national legal systems, but those limitation periods may not infringe the principle of tax neutrality and must be proportionate, meaning that they should not introduce formalities which are disproportionate to the aims pursued, and should not put additional burden on the taxable person.

In assessing the foregoing in the context of the two principles, the reasons for non-compliance with the mandatory period should be taken into consideration: those independent of the taxable person and those dependent on the taxable person.

According to CJEU, any national legislation which makes the exercise of a taxable person's right 'in good faith' to deduct input tax in the same accounting period as that in which the tax due was payable and does not take into account all the facts that may arise, goes beyond what is necessary to ensure the correct collection of VAT and prevent tax fraud.

CJEU's ruling opens a pathway for recovering penalty interest on VAT on intra-Community acquisitions to those taxpayers who were forced to pay them in the instances of settling VAT after a three-month period following the end of the month in which the tax liability arose. Unduly paid interest constitutes an overpayment within the meaning of the Polish Tax Code, and the overpayment resulting from the CJEU judgment is subject to refund with interest. It should be noted that under Article 78(5) of the Polish Tax Code, the taxpayer is entitled to receive interest on the overpayment for the period from the day on which the tax overpayment arose until the day it is refunded, provided that the taxable person has submitted an application for refund of tax overpayment before or within 30 days as of the entry into force of a ruling of the Polish Constitutional Tribunal.

It should also be stressed that, although the judgment relates directly to intra-Community acquisitions of goods, due to the similar shape of provisions on other transactions to which the reverse charge mechanism applies, e.g. import of services, it can be further applied to enable the recovery of interest also on these transactions.

We will gladly support you in preparations for the recovery of overpaid interest, starting with drawing up corrected returns/SAF-T files, through calculation of the amounts to be recovered with interest and submitting applications for overpayment, ending with representing you before tax authorities throughout the proceedings.

If you would like to learn more about the issues discussed, please do not hesitate to contact us.

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