

The time for VAT deduction on adjustment of VAT on intra-Community acquisition of goods is against the EU VAT Directive

On March 18, 2021 The Court of Justice of the European Union ruled that Polish legislation which makes the right to deduct VAT on intra-Community acquisitions in the same settlement period in which the VAT is due conditional on the output VAT shown in a tax return submitted within three months of the end of the month in which the tax liability arose in respect of the acquired goods, is not in compliance with the Directive.

RULES APPLICABLE	<p>According to the regulations currently in force, if a taxpayer does not account for an intra-Community acquisition of goods based on the moment when the tax obligation arises, but does so by way of an adjustment within 3 months following the month when the tax liability arose (accounting for output and input tax in the tax return for that period) then such a transaction will remain tax neutral.</p> <p>However, if the tax due on an intra-Community acquisition is not indicated in the relevant tax return filed within the above 3-month period, then the taxpayer is not allowed to deduct the input tax in the period in which the output tax is recognized. This means that output VAT has to be accounted for in the tax return when the tax liability arose, while input VAT can only be recognized in the tax return filed for the current period. As a result, the need to pay tax interest arises.</p>
QUESTION REFERRED FOR A PRELIMINARY RULING	<p>The Provincial Administrative Court (WSA) in Gliwice expressed doubts as to the consistency of Article 86(10b)(2)(b) of the VAT Act with EU law. Pursuant to Article 86 (10i) of the aforementioned Act, if the three-month deadline is exceeded, the taxpayer must correct the previously submitted return and at the same time may only settle the input tax on an ongoing basis, as a result of which the taxpayer bears the economic burden of the VAT due and any possible interest for late payment. Given the above, the Court inquired whether the provisions indicated were consistent with Union law.</p>
CJEU'S RULING	<p>The CJEU ruled that taxpayers cannot be temporarily charged with the input VAT due on intra-Community acquisition of goods, especially since no amount is due to the tax authorities on such acquisitions. Accordingly, the application of national legislation cannot, in the opinion of the CJEU, automatically prevent the exercise of the right to deduct VAT due on intra-Community acquisition of goods in the same period as the settlement of the same amount of VAT.</p>
PLANNED CHANGES	<p>As part of the hitherto published (prior to the decision of CJEU) draft of the SLIM VAT 2 package, the amendment to the regulations provides for an abandonment of the necessity to settle the output VAT within 3 months as a condition for the deduction of the input VAT in the same settlement period as the declared output VAT, but only in relation to the import of services (principles of settlements correspond to those of intra-Community acquisition of goods).</p> <p>Taking into account the discussed CJEU ruling, it may be expected that the Ministry of Finance will make favorable changes in the draft also with respect to intra-Community acquisition of goods.</p>

HOW CAN WE HELP?

EFFECTS OF THE RULING ON TAXPAYERS

The CJEU ruling is the basis for a request to the tax authorities for a reimbursement of interest accrued in the case of overdue reporting of VAT due on intra-Community acquisition of goods, together with interest. Although this ruling applies to intra-Community transactions, the reasoning behind it may be extended to other transactions where the same principles apply, i.e. import of services or supply of goods where the purchaser is the taxpayer.

SUBMITTED AN APPLICATION FOR REFUND OF TAX OVERPAYMENT

We offer you support throughout the entire process until you receive your interest refund. Our assistance may include, but is not limited to, gathering all necessary data, performing calculations, making settlement adjustments, submitting an application for refund of tax overpayment, and representing you during the overpayment proceedings.

Where decisions have been issued for a particular period of time or there have been rulings of administrative courts in such cases, the CJEU ruling is the basis for reopening the proceedings. The deadline for submitting a request for resumption of tax proceedings is 1 month from the date of publication of the ruling, and in the case of court and administrative proceedings - 3 months from the date of publication of the CJEU ruling.

This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland experts.

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