

VAT refunds: the European Commission decides to bring Hungary before the European Court of Justice for its VAT legislation which precludes Hungarian taxable persons from claiming reimbursement of input VAT where the underlying supply has not been paid

The European Commission has decided to bring Hungary before the European Court of Justice in respect of its VAT legislation which precludes Hungarian taxable persons from claiming reimbursement of input VAT where the underlying supply has not been financially settled by the taxable person. Despite the Commission's request (IP/09/1463) to respect the principle of fiscal neutrality in VAT refunds, Hungary has not taken timely action to change its legislation.

The Hungarian VAT legislation grants taxable persons the option to choose between carrying forward their excess VAT (which results from deductible VAT exceeding payable VAT in a tax period) to the next tax period or immediately claiming the refund of it. However, the reimbursement of excess VAT cannot be claimed in respect of input VAT charged on a purchase that has not yet been paid by the taxable person. As a result, taxable persons whose tax returns consistently show "excesses", are *de facto* obliged to carry forward the excess input VAT to the following tax period.

The Commission considers that this regime infringes Article 183 of Directive 2006/112/EC (VAT Directive) which states that where for a given tax period, the amount of deductions exceeds the amount of VAT due, Member States may either make a refund or allow the carry over of the excess VAT forward to the following period, under the conditions which they shall determine.

The European Court of Justice has held that while the above Article provides Member States with some leeway in determining the conditions for VAT refund, account must be taken of the general principles of the common system of VAT. In particular, the principle of fiscal neutrality must be respected, so that the method of refund adopted by Member States does not entail any financial risk for the taxable person.

Under the contested Hungarian provisions, the financial settlement condition applies only on input VAT. Indeed, VAT on the sales of the taxable person is due at the time of the return, regardless of the payment, while a possible refundable VAT balance would have to be carried over to the next period if all input VAT is not paid to the suppliers. This affects the neutrality of VAT.

Hungary argues on the one hand that the system presents no burden for taxable persons as they are not precluded from deducting input VAT and on the other hand that

refundability of input VAT eventually depends on the taxable person's action to settle the price.

The Commission claims however that the principle of fiscal neutrality is achieved by both a deduction mechanism under which the input VAT charged on supplies to the taxable person may be deducted, as well as by a refund mechanism under which the excess VAT is immediately to be refunded to the taxable person.

In periods of high investments, where VAT excess is generated on a continuous basis, the Hungarian regime compels taxable person to bear the burden of the VAT by disallowing refund. As in the common system of VAT the payment of VAT is not made conditional upon the financial settlement of the supply, according to the principle of neutrality, the same terms must be valid for the refund of excess VAT.

Background

The incriminated national provisions are as follows:

- Articles 55(1), 56, 131(1) and (2)(a)-(b) and 186(1)-(3) of Act CXXVII of 2007 on General Turnover Tax,
- Article 37(4), Part B(1)(a) and Part B(3)(a) of Annex I and Part I, point 2(a) of Annex II to the Act XCII of 2003 on Tax Procedures.

The Commission's case reference number is 2005/4808.

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http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

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http://ec.europa.eu/community_law/infringements/infringements_en.htm