

VAT: The Commission has decided to bring Greece before the European Court of Justice for not ensuring in its legislation the refund of unduly paid VAT and other taxes

The Commission has decided to bring Greece before the ECJ in the context of three infringement cases for the rejection of refund claims of unduly paid taxes including VAT. The rights tax payers derive from EU law include the right to obtain the repayment of taxes paid when they are levied by Member States in violation of EU law.

Where a Member State is found to have imposed a tax in violation of EU law, the right to obtain a refund of amounts of tax paid but not due is the consequence and complement of the rights conferred on individuals by EU law.

According to the case-law of the ECJ (C-99/82), the procedural conditions governing the actions for safeguarding rights which individuals derive from EU law are those laid down in national law. However, such national rules cannot be less favourable than those governing similar domestic actions (principle of equivalence), nor may they render the exercise of rights conferred by EU law virtually impossible or excessively difficult (principle of effectiveness).

Case 2005/4094

Between 1987 and 1992, Greece applied a special VAT scheme to the importation and distribution of petroleum products. VAT was not levied on each transaction in the distribution chain but rather as a single phase tax upon importation of the goods. All further transactions were treated as exempt from VAT. The operators concerned were therefore prevented from deducting VAT on related inputs.

In that respect, the ECJ ruled in C-62/93 *BP Soupergaz* that Greece was precluded from applying the special scheme and that the operators concerned derived rights directly from the provisions in the VAT Directive concerning the right of deduction and found that they were entitled to claim with retroactive effect the refund of the VAT they had been unable to deduct.

However, it appears from the case-law of the Greek Council of State that the practice is to render the exercise of this right *de facto* impossible.

Case 2007/4407

Greek translators appointed by the Greek Ministry of Foreign Affairs sought the reimbursement of the VAT claiming that it had been unduly paid. The reimbursement was denied on the grounds that they had mentioned VAT on the receipts issued in respect of the period in question.

In that respect, the ECJ ruled in joint Cases C-78/02 to C-80/02 that the amount mentioned as VAT on the invoice drawn up by a person providing services to the State may not be classified as VAT where that person erroneously believes that he is providing those services as a self-employed person whilst in reality there is an employer-employee relationship. Moreover, the VAT Directive (Directive 77/388/EEC) does not preclude the reimbursement of an amount mentioned in error on an invoice where the services at issue are not subject to VAT.

Greece however has not adopted a legal or administrative instrument to ensure the reimbursement of unduly levied charges to persons, such as the above translators.

Case 2007/4581

The ECJ held in case C-13/06 that road assistance services supplied by the Greek Automobile Club to its members in return for the payment of a fixed annual subscription was exempt from VAT.

While Greece modified its legislation to exempt the above services from VAT, the modified legislation also appears to preclude the refund of VAT charged on the basis of the previous legislation despite the fact that the above judgment such services should have been VAT exempt from the date of entry into force of the VAT Directive.

While the refund of unduly levied charges may be restricted where it is established that the reimbursement of charges unduly levied would result in an undue enrichment of the person requesting the reimbursement, the modified legislation makes no reference to such condition.

Background:

The incriminated national provisions are as follows:

- Article 37 of Law 1642/1986, C-62/93 (case 2005/4094),
- Joint cases C-78/02 to C-80/02 (case 2007/4407),
- Article 15(42) of Greek Law 2166/1993 as amended by Law 3492/2006 (case 2007/4581).

For the press releases issued on infringement procedures in the taxation or customs area see:

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

For the latest general information on infringement measures against Member States see:

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