TAX ALERT: Court of Justice of the European Union delivers a judgment on the three-month period for reporting VAT on intra-Community acquisitions in favour of Polish taxable persons

In its judgment delivered in case C-895/19 on 18 March 2021, the Court of Justice of the European Union (hereinafter referred to as the 'CJEU') ruled that the provisions of the Polish VAT law which limit neutrality of taxation on intra-Community acquisitions (hereinafter referred to as 'ICA') violate the provisions of Council Directive 2006/112/EC (hereinafter referred to as the 'VAT Directive'). The CJEU stated that national legislation which, with no consideration of all relevant circumstances, including but not limited to the taxable person's good faith, precludes the exercise of the right to deduct input VAT on intra-Community acquisitions in the same accounting period as that in which the corresponding output VAT must be reported goes beyond what is necessary to ensure the correct VAT collection and prevent tax fraud.

Reporting intra-Community acquisitions of goods according to the rules applicable so far

As of 1 January 2017, special provisions have been applicable in Poland with regard to periods for reporting output and input VAT on reverse-charged transactions (including but not limited to intra-Community acquisitions of goods in Poland). As per the provisions of the VAT law of 11 March 2004 (hereinafter referred to as the 'VAT law'), a taxable person shall report output VAT within three months following the month in which the corresponding tax liability arose. In the same period, a taxable person may exercise their right to deduct input VAT. However, if a taxable person does not report output VAT within this three-month period, at a later stage they are required to adjust their tax declaration submitted previously for this period while the input VAT can be reported in the ongoing tax declaration. Thus, a taxable person is required to temporarily bear the cost of output VAT. If output VAT is not reported in due time, penalty interest on tax arrears is also payable.

Question referred

The case concerned a Dutch company which requested an individual tax ruling. In its request, it presented the facts stating that in the course of its activity, it made intra-Community acquisitions of goods in Poland. It maintained that it was not always able to report output VAT on ICA in a tax declaration submitted within three months following the month in which the tax liability arose in relation to the goods acquired. In such cases, it reported VAT after this period had expired by adjusting its tax declaration submitted previously. This might result from late receipt of an invoice or incorrect classification of a given transaction.

In its request for an individual tax ruling, the Company asked whether in such cases it might deduct input VAT on intra-Community acquisitions of goods in the same accounting period as that in which the corresponding output VAT was reported, even if the tax declaration was adjusted already after the expiry of the three-month period. The Company believed that the relevant legislation introduced an additional requirement not covered by the conditions for the right to deduct stipulated in the VAT Directive and thus infringed the principles of tax neutrality and proportionality. The tax authority did not agree with this position.

The request for a preliminary ruling on the application of the legislation referred to above was made by Wojewódzki Sąd Administracyjny (Regional Administrative Court in Gliwice) examining the action in case I SA/Gl 495/19. By referring its question, the Regional Administrative Court sought to establish whether Articles 167 and 178 of the VAT Directive are to be interpreted as precluding national legislation which makes the exercise of the right to deduct input VAT in the same accounting period as that in which the output VAT is payable on an intra-Community acquisition of goods subject to entry of the output VAT on that transaction in the appropriate tax declaration submitted within three months following the end of the month in which the tax liability arose in relation to the goods acquired.

CJEU judgment

The CJEU agreed with the Company and ruled as follows: *Articles 167 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, amended by Council Directive 2010/45/EU of 13 July 2010, are to be interpreted as precluding national legislation which makes the exercise of the right to deduct input VAT in the same accounting period as that in which the output VAT is payable on an intra-Community acquisition of goods subject to entry of the output VAT on that transaction in the appropriate tax declaration submitted within three months following the end of the month in which the tax liability arose in relation to the goods acquired.*

Also, the CJEU stated that *as a result of infringing a formal requirement, national legislation must not automatically preclude the exercise of the right to deduct input VAT on an intra-Community acquisition in the same accounting period as that in which the corresponding output VAT is reported with no consideration of all relevant circumstances, including but not limited to the taxable person's good faith.*

Moreover, the CJEU ruled that *the member states may introduce a limitation period the expiry of which has the effect of penalising a taxable person who has not been sufficiently diligent and has failed to claim deduction of input tax, by making them forfeit their right of deduction, in so far as, first, that limitation period applies in the same way to analogous rights in tax matters founded on domestic law and to those founded on EU law (principle of equivalence) and, second, it does not in practice render impossible or excessively difficult the exercise of the right of deduction (principle of effectiveness)*.

How is the CJEU judgment relevant to Polish taxable persons?

The CJEU judgment is favourable to Polish taxable persons. In consequence, we believe that in light of this judgment, taxable persons can adjust their VAT declarations submitted previously and claim reimbursement of the penalty interest on tax arrears unduly paid so far as a result of reporting output and input VAT on ICA in different accounting periods. Also, the CJEU judgment should be the basis for neutral reporting of output and input VAT on ICA in the same accounting period in future, which will make the ongoing VAT reporting much simpler.

However, given the expected scale of requests for reimbursement of VAT overpaid by taxable persons, there is a risk that the tax authorities will not make automatic reimbursements but will initiate verification proceedings and tax audits to check whether the transactions have been reported correctly.

The CJEU delivered its judgment in a case concerning intra-Community acquisitions only. However, we believe that it may be applicable also to other reverse-charged transactions making it possible for taxable persons to adjust their tax declarations and claim reimbursement of penalty interest paid on transactions such as imports of services, reverse-charged supplies of goods and deemed intra-Community acquisitions made in Poland.

If any of the above applies to you and you want to claim reimbursement of the penalty interest paid, we will be happy to help. In case of any questions or doubts with regard to claiming reimbursement of such overpayments, please do not hesitate to approach us directly. We remain at your disposal.

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