

By PwC Deutschland | 07. September 2023

# ECJ: Direct refund claim of incorrectly paid VAT also towards tax authorities

**Following a preliminary request from the Münster Tax Court the ECJ ruled that the recipient of supplies of goods has a direct claim towards the tax authorities for reimbursement of improperly invoiced VAT he paid to the suppliers and which has been duly transferred by the latter to the treasury, even if the recipient can no longer turn directly to his suppliers for reimbursement due to the statute of limitation as provided for by national law.**

## Background

The plaintiff purchased wood from his suppliers at 19% VAT and sold it to his customers at a reduced VAT rate of 7%. The Tax Court of Muenster confirmed that the plaintiff had correctly applied the reduced VAT rate on his deliveries of wood, but at the same time pointed out that the input services from his suppliers were likewise to be taxed at the reduced rate of 7%. As a result, the tax office reduced the plaintiff's input VAT deduction and demanded from him repayment of the difference amount.

The plaintiff then applied to the tax office for a waiver for reasonable cause of the difference VAT, citing the "Reemtsma" ruling of the European Court of Justice (ECJ) from 15 March 2007 (C-35/05). The tax office refused because the plaintiff himself was responsible for the situation, as he was not entitled at the time to resell the goods at a different VAT rate.

In the *Reemtsma* decision the ECJ had to decide whether VAT invoiced and paid in error can be refunded under the Eighth Directive, even though it would not have been deductible under the Sixth Directive, and if a non-resident taxable person must be allowed to bring a claim directly against the authority which collected the tax, or whether it suffices that he should be entitled to act indirectly by claiming from the supplier who had invoiced the tax (and who could in turn claim against the tax authority). The ECJ held that where reimbursement of the value added tax would become impossible or excessively difficult, the Member States must provide for instruments necessary to enable that recipient to recover the unduly invoiced tax in order to respect the principle of effectiveness.

In light of the aforementioned, the Muenster Tax Court was skeptical, suspended the proceedings and referred the question to the ECJ as to whether - in the circumstances of the case in dispute - a direct claim for refund of the difference in VAT against the tax office would in accordance with EU guidelines on this matter. The Muenster Tax Court had doubts as to whether the ECJ case law, which had always involved cases of insolvency of the suppliers, would apply here, as in the case at hand the suppliers are not insolvent.

Not unexpectedly, the ECJ confirmed its previous opinion also in the case of dispute.

## Decision

In adherence to Directive 2006/112/EC (the VAT Directive) and in observance of the principle of effectiveness the ECJ has ruled that the recipient of supplies of goods (here: the plaintiff) has a direct claim towards the tax authorities for reimbursement of improperly invoiced VAT he paid to the suppliers and which has been duly transferred by the latter to the treasury, even if the recipient can no longer turn directly to his suppliers for reimbursement due to the statute of limitation as provided for by national law.

The ECJ also stated that the above also applies in cases where there might be a formal way or procedural possibility that the suppliers themselves may later claim the overpaid VAT from the tax authorities after having amended the initial (incorrect) invoices. If the VAT improperly charged by the tax authorities is not reimbursed within a reasonable time, the damage suffered on account of the unavailability of these amounts

must be compensated by the payment of default interest.

Neither the fact that the suppliers are not insolvent, nor the risk of double reimbursement raised by the referring court can change the opinion of the ECJ. Insolvency, for example, is only one of the circumstances in which it may be impossible or excessively difficult to obtain a reimbursement in respect of VAT which has been unduly invoiced and paid (judgment of 15 March 2007, *Reemtsma Cigarettenfabriken*, [C-35/05](#), paragraph 41).

However, the ECJ pointed out that the right for refund of improperly invoiced and incorrectly paid VAT must be refused where there is fraud or suspected fraud, abuse, or negligence.

**Source:**

ECJ judgment of 7 September 2023, case: [C-453/22 Schütte](#)

**Schlagwörter**

VAT refund, refund claim