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By PwC Deutschland | 23 April 2013

Interest on tax in breach of community law to run from date of tax payment

The ECJ has held that a repayment claim for a tax levied in breach of community law should bear interest for the entire period between payment and repayment.

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Under Romanian law, repayments of taxes wrongly levied bear interest from the receipt of the repayment claim by the tax office. Consequently, no interest is due for the period between the original payment and the taxpayer's request for refund. A Romanian resident is contesting this exclusion on the assertion of a conflict with community law following repayment of a motor vehicle "pollution tax" levied as a registration charge on a second-hand car bought in Germany. She requested repayment a year later on the grounds that the tax was discriminatory insofar as it was only levied on vehicles first registered in Romania on or after July 1, 2008. In the meantime, the ECJ has held this tax to be indeed in breach of community law as a discrimination in favour of older vehicles purchased on the home market (case C-402/09, judgment of November 7, 2011).

The EJC has now held that the refund of a tax collected in breach of community law must hold the aggrieved taxpayer harmless from all damage resulting from the undue charge. This includes not only the amount at issue, but also adequate compensation for deprivation of the use of the funds in the meantime. Accordingly, the interest period must run from the date of the original payment if the taxpayer is to be fully compensated for the loss suffered, that is, for the remedy to be effective.

The ECJ case reference is C-565/11 *Irimie*, judgment of April 18, 2013.

n.b. Whilst there is no similar German tax on motor vehicle registration, the case is relevant in view of the German provision excluding tax payment and refund claims from interest unless specifically provided by statute. Even where there is such a statutory provision, the interest period does not necessarily concide with the actual period of the outstanding.

Keywords

tax interest