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VAT refund: One-month period for submission of additional information not a deadline

In a French case the ECJ held that failure by a taxable person to provide additional information on the VAT refund application and to answer further questions within the one-month period provided for under Council Directive 2008/9 does not automatically lead to the forfeiture of his entitlement to a VAT refund.

Sea Chefs Cruise Services GmbH applied to the French tax authorities for a refund of input VAT, which the latter refused because the taxpayer had failed to respond within the one-month time limit as provided in Article 20(2) of Council Directive 2008/9 of 12 February 2008. Article 20(2) of Council Directive 2008/9 of 12 February 2008 sets out the conditions under which a taxable person established in one Member State can obtain a VAT refund in another Member State.

The ECJ pointed out that the claim for a VAT refund, mirroring the right to deduct input tax, is a fundamental right of the common system of value added tax; it reflects the principle of neutrality as a key point underlying the whole EU VAT system and thus cannot generally be restricted.

The period of one month as provided for in Article 20(2) of Directive 2008/9/EC for the submission of information is not a filing deadline, and failure to comply with that period does not therefore mean that the claim to a refund is no longer valid. According to Art. 20(2) “the Member State of refund shall be provided with the information requested under paragraph 1 within one month of the date on which the request reaches the person to whom it is addressed”. The ECJ concludes that the absence of the words 'at the latest/no later than' (in contrast to Article 15(1), which states that the refund application shall be submitted “not later than” 30 September) is a clear indication that the EU legislature did not wish to fix a time limit here.

In the opinion of the Court a deadline would also lead to practical problems if, say, the additional information is requested from third parties or by the authorities of the Member State in which the taxable person is established. This may make it impossible for the taxpayer to meet the deadline; he could lose the right through no fault of his own as he has no chance to influence the course of events.

Source: The ECJ case reference is C-133/18 Sea Chefs Cruise Services judgment of May 2, 2019.

Keywords

VAT refund, application for VAT refund, deadline