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By PwC Deutschland | 06 December 2024

ECJ : Carry forward of input VAT surplus under Article 183 of the VAT Directive

In a Portuguese request for a preliminary ruling, the ECJ dealt with the question of the deadline when applying for a refund or carry over of a VAT surplus. In the case of dispute, the application for carry over was only made after the resumption of the previously discontinued economic activity.

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Article 183 VAT Directive

Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to **the following period**.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.

Background

The plaintiff in the main proceedings (Modexel) submitted a declaration of termination of its economic activity and close down of business with effect from 28 February 2015. In his VAT return for the first quarter of 2015 he declared a recoverable VAT amount of EUR 12,500. In May 2016, Modexel resumed its economic activity. Modexel deducted that VAT credit in its first VAT return following the restart of its activities.

The tax authority refused the deduction of VAT on the ground that Modexel should have requested a refund of that credit within 12 months from the date on which it ceased its economic activity and that, since Modexel had not made such a request, it had forfeited the amount at issue.

Questions referred

Must the expression 'the following period' in Article 183 of the VAT Directive 1 be interpreted as referring literally to the period which immediately follows in the calendar year?

If the answer is in the negative, where an undertaking ceases its activity and subsequently recommences that activity, with a period of 15 months having elapsed between those two points in time, is that undertaking entitled to deduct the amount of the excess which it carried forward when it ceased its activity in the first assessment that it files after recommencing its activity?

Decision

The ECJ held that, *where a taxable person ceases economic activity, that person* ***may not carry forward*** *excess VAT declared at the time of that cessation of activity,to a following period and* ***may recover*** *that amount only by requesting* ***a refund within 12 months*** *from the date on which that activity ceased, provided that the principles of equivalence and effectiveness are observed.*

As regards the concept of 'subsequent period' in that provision, it is apparent from the use of those words in the singular that that concept must be understood as referring to the tax period immediately following the tax period during which the amount of the deductions exceeds the amount of the VAT due.

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In addition, in accordance with Article 252 of the VAT Directive, the duration of a taxable period is to be fixed by each Member State within the limits determined by the second paragraph of that article, without it being dependent that a taxable person carries out an economic activity during all or part of a given taxable period.

Thus, a limitation period, the expiry of which has the effect of penalizing a taxpayer who has failed to claim a refund of VAT, by causing him to lose the right to that refund, cannot be regarded as incompatible with the system established by the VAT Directive provided, first, that that period applies in the same way to similar rights in tax matters based on national law and to those based on EU law (principle of equivalence) and, secondly, that it does not in practice make it impossible or excessively difficult to exercise the right to a refund of VAT (principle of effectiveness).

As regards the **principle of equivalence**, the ECJ notes that it could not identify evidence capable of raising doubts as to whether the legislation at issue in the main proceedings complies with it.

As regards the **principle of effectiveness**, it is apparent from the order for reference that, according to the local tax authorities, Modexel should have requested a refund of the excess VAT within twelve months of the date on which it ceased to operate economically. The ECJ therefore concludes, that a limitation period of 12 months from the period in which the excess VAT arose, does not seem to make it impossible or excessively difficult in practice for a taxable person or a former taxable person to assert his or her or its right to a refund of excess VAT.

Source:

ECJ, judgment of 5 December 2024 **C?680/23** *Modexel*.

Keywords

deadline, input VAT