

Adjusting invoices for reverse charge supplies and recovering VAT after tax audit (2/31/20)

On 2 July 2020, the Court of Justice of the European Union ("CJEU") ruled on case C-835/18 (SC Terracult SRL). The dispute was over the tax authority's refusal to allow a taxable person to adjust invoices after the tax authority had completed a tax audit and assessed an additional tax liability, thus denying the taxable person's right to a tax refund. The tax authority's decision was final because the taxable person had accepted it. The taxable person sought to adjust invoices on the basis of new facts which were not known when the tax authority made the decision and which resulted in reverse-charge VAT being applied to the underlying transactions.

Facts and circumstances of the main proceedings

Donauland SRL, a Romanian company, supplied rapeseed to Almos Alfons Mosel Handels GmbH ("Almos"), a German company. Almos treated the transactions as intra-Community supplies.

During a tax audit, Donauland was unable to prove transportation of the rapeseed from Romania to Germany, and the Romanian tax authority therefore assessed an additional VAT liability. Donauland did not challenge the tax authority's decision, and it became final.

Donauland reclassified the intra-Community supplies of goods as domestic supplies, issued adjusted invoices, and charged the standard rate of VAT. The invoices cited the tax authority's decision as the basis for reclassification.

On receipt of the adjusted invoices, Almos confirmed to Donauland that the rapeseed had never left Romania and asked Donauland to adjust the invoices again in order to state Almos's Romanian VAT registration number, creating a basis for applying reverse-charge VAT on the supplies.

Donauland issued new adjusted invoices and reclassified the domestic supplies as reverse-charge supplies. Entering the new adjusted invoices on Donauland's VAT return resulted in a VAT overpay.

The tax authority refused to refund the overpaid VAT mainly on the basis that the refund was claimed for an audited period on which the audit decision had become final.

In hearing the case, the CJEU invoked fiscal neutrality as a key principle of the common system of VAT aimed at fully easing the tax burden placed on the taxable person in doing business. To ensure fiscal neutrality, the legal framework of member states must provide for an option to adjust any incorrectly calculated VAT appearing on a tax invoice if its issuer proves his good faith. If the issuer has prevented the risk of loss of VAT revenue early and completely, the principle of fiscal neutrality dictates that the incorrectly calculated VAT may be adjusted. Also, member states must not make such adjustment dependent on the issuer's good faith or the tax authority's discretion.

Having examined the facts and circumstances of the case, the CJEU ruled that provisions of the VAT directive, as well as the principles of fiscal neutrality, effectiveness and proportionality, should be interpreted in a way that prohibits any legal framework or administrative practice which prevents a taxable

person having made transactions which, as it later turns out, attract reverse-charge VAT, from adjusting invoices issued for those transactions and from using those invoices for adjusting an earlier VAT return or for filing a new VAT return in the light of adjustments so made, to recover the VAT incorrectly calculated and paid by the taxable person, on the grounds that for the period in which the transactions took place, a tax review has already been completed, on which the competent financial authority has issued a tax notice, which has become final because the taxable person has not challenged it.

This ruling can be useful to Latvian taxable persons seeking a VAT refund in similar circumstances for a period covered by a tax audit by the State Revenue Service.