

Retrospective VAT refund in Latvian style 2/15/21

The national legislation of certain member states, including Latvia, does not give a taxable person established in another member state the right to recover VAT as a taxable person registered in another member state if the person registers for Latvian VAT. This article explores some of the findings made in the Regional Administrative Court's ruling of 28 January 2021 on case No. A420147918, which has now taken effect.

The court heard a dispute over whether the claimant, who was not registered for Latvian VAT during the period of transactions, may recover VAT on goods he acquired in Latvia and subsequently used for making taxable supplies.

Background

The claimant, a company registered for Estonian VAT, made acquisitions in Latvia during a period it was not registered for Latvian VAT (February-June 2016). The claimant later registered for Latvian VAT and claimed a refund of VAT on transactions that took place before the registration. The Latvian tax authority refused a refund on the grounds that the claimant was not registered for Latvian VAT during the period of transactions and Latvian national legislation does not give this right to the claimant.

There was no dispute over VAT being duly charged on the claimant's subsequent supplies.

The claimant found himself in a situation where he had no remedy to exercise the right to deduct input tax on goods acquired in Latvia, even though he had satisfied all the criteria for input tax deduction. This was contrary to the purpose of the input tax deduction system – to fully exempt the trader from VAT he has to pay or has paid in connection with his business.

Court findings

Having analysed this legal situation in the light of the fundamental principles of the common VAT system and the settled case law of the Court of Justice of the European Union ("CJEU"), the court found that the common VAT system ensures neutrality in the VAT treatment of all business activities regardless of their purpose or outcome if those activities are in principle subject to VAT.¹

The court established that the provisions of the applicable EU directives are not subject to any formal condition associated with non-registration or with an obligation to register for VAT in the member state of refund.

This implies that a member state has no power under its national legislation to deny a taxable person established in another member state the right to a VAT refund solely because the taxable person is or had to be registered for VAT in another member state.

Also, in case C-242/19 *CHEP Equipment Pooling*, concerned with interpreting the provisions of the VAT directive and Council Directive 2008/9/EC regarding a VAT refund to taxable persons not established in the member state of refund but established in another member state, the CJEU found that a member state cannot deny a taxable person established in another member state the right to a VAT refund solely because it is or had to be registered for VAT in the member state of refund.

It follows from the above that Latvian national legislation on VAT refund mechanisms needs to be aligned

with the fundamental principles of the common VAT system and with the purposes of the VAT directive. In the meantime, taxable persons facing similar situations can defend their interests by invoking the CJEU case law findings, which must be followed and applied by any government agency in deciding a private person's issue in accordance with the Administrative Procedure Act.

¹ Ruling C-533/16 of 21 March 2018 (EU:C:2018:204), paragraphs 37 and 38, as well as the case law indicated therein