

# European Court of Justice rules on compliance with formal requirements when seeking VAT refund from another member state 1/40/21

On 9 September 2021 the Court of Justice of the European Union (CJEU) ruled on a dispute over the tax authority's right to refuse a VAT refund if the taxable person fails to duly submit documents the authority has requested to prove the person's refund claim is valid. This article explores CJEU findings and Latvian case law.

## The main proceedings and preliminary questions

A German VAT registered company established in Germany that supplied cars to Spanish companies applied to the Spanish tax authority for a refund of VAT the German company, unregistered in Spain, had paid there. The Spanish tax authority sent information requests asking the company to provide the original invoices that formed the basis for the refund claim and to state the purposes for which the acquired goods and services had been used.

The German company replied about its line of business and said it had problems submitting all the requested documents, but still insisted on its entitlement to a refund of the VAT paid in Spain.

The Spanish tax authority sent a new information request, saying it needs those details to prove the existence of transactions and the use of goods and services for transactions giving input tax deduction rights.

Since the German company did not reply to that information request, the Spanish tax authority rejected the VAT refund claim.

The German company appealed the decision to the Spanish central authority for tax appeals and later in court. To justify its entitlement to a VAT refund, the company had finally attached the missing documents to its claim. The dispute went to the CJEU in the form of the following preliminary questions:

- Is the situation permissible where a taxable person, repeatedly asked by the tax authority to prove that the preconditions for his entitlement to a tax refund are fulfilled, unreasonably fails to comply with this request and, after a refund has been refused to him, delays submission of the necessary documents until the start of administrative review or litigation proceedings?
- Is an abuse of rights present where a taxable person unreasonably fails to provide the tax authority with information required to validate his rights, which he was both permitted and asked to submit, but he later volunteers this information to the review authority or court?
- Does a taxable person not registered in the member state, who unreasonably fails to duly provide information that is essential to prove his entitlement to a tax refund, lose this right once the agreed or prescribed time limit runs out and the authority decides to refuse a refund?

## CJEU findings

In reply to the questions referred to it, the CJEU stated that a taxable person's right to claim a refund of VAT paid in another member state depends on input tax deduction rights in the taxable person's member state. Under the principle of VAT neutrality, input tax deduction rights should be granted if the essential requirements are satisfied even if the taxable person fails to meet certain formal requirements. However, this approach does not apply where failure to meet such formal requirements delays the submission of reliable evidence to prove that the essential requirements are satisfied. Since [Directive 2008/9/EC](#) implies that a taxable person may receive a VAT refund only if he meets the obligations prescribed by the directive, including submission of the original invoices or import documents for the transactions subject to VAT in the member state of refund, and since the German company was later able to submit such documents to the court, what matters here is the deadline by which that evidence may be submitted, rather than a breach of formal requirements that prevents the taxable person from proving that the essential requirements for the entitlement to a VAT refund are satisfied.

The CJEU stated that the VAT directive permits national rules under which the member state may refuse a VAT deduction to a taxable person that holds incomplete invoices even if those are completed later – after receiving the decision refusing a refund – by submitting information that proves the truthfulness, nature and amount of transactions appearing on the invoice. The CJEU added that the referring court's decision does not imply that the time limit for replying to the information requests was obviously insufficient, nor does it imply that the German company had warned the tax authority that it did not have that information. This leads to the conclusion that the tax authority had unsuccessfully taken the necessary steps to obtain evidence that the VAT refund claim was valid.

So the CJEU ruled that the EU principles of law permit the rejection of a VAT refund claim where the taxable person has failed to duly provide the competent tax authority – even at its request – with all necessary documents and information to prove his entitlement to a VAT refund, although the taxable person submitted those documents and information on his own initiative at the appeal or litigation stage. The ruling also states that the taxable person's late submission of documents does not constitute an abuse of rights because this behaviour does not give him a tax advantage.

## Latvian case law

Latvia has established case law on documents and evidence being submitted late, i.e. after the tax authority has issued an administrative instrument. For example, in Ruling SKA-801 of 25 June 2015 where after repeated invitations the taxable person failed to submit the information being requested during the audit but submitted it later during appeal proceedings, the Supreme Court stated that although an appeal against the administrative instrument is a continuation of the original administrative case, this does not mean a continuation of the audit. So the submission of additional evidence during the appeal against the audit results cannot fully replace the audit procedure. Otherwise this would create a situation where the taxable person could refuse to cooperate with the tax authority during the audit and, having evaluated the information obtained by the tax authority and the findings made in the decision resulting from the audit, he could decide what facts he is interested in disclosing. During an appeal against the decision resulting from the audit, the taxable person may submit additional evidence relating to the facts or evidence submitted or examined during the audit. The same applies to litigation proceedings. In court, too, the taxable person may submit only additional evidence. Otherwise the court would be assuming the tax authority's functions and conducting a tax audit.

In summary, the findings of Latvian case law are consistent with the CJEU case law and demonstrate how important it is to cooperate with the tax authority during its control measures and to submit the requested information early.