

# CJEU on deducting input VAT where reverse charge should have been applied (1/20/19)

On 11 April 2019, the Court of Justice of the European Union (CJEU) ruled on case C-691/17 PORR Epitesi Kft. The CJEU examined whether the Hungarian tax authority had acted contrary to the VAT directive<sup>1</sup> and VAT principles in preventing a customer from deducting input tax on an invoice issued under the general VAT scheme for a supply attracting domestic reverse-charge VAT. This article explores the CJEU ruling.

Hungarian company PORR Epitesi Kft was building a highway and accepted tax invoices from several service providers that attracted reverse-charge VAT under Hungarian rules but were issued under the general VAT scheme. The company paid VAT to those suppliers, reported the input tax and asked the tax authority for a refund of overpaid VAT. The tax authority refused the request on the grounds that the invoices needed correcting because of the incorrect VAT treatment. There was no suspicion of fraud since the suppliers who had issued the invoices had paid the VAT to the tax authority.

The CJEU said that, even though the right to input tax deduction is an integral part of the VAT system, which should not be restricted in general, the tax invoices fell short of the national requirements, and the company had by mistake paid the VAT to the suppliers instead of the tax authority. The CJEU found the company was not entitled to deduct the input tax, and the Hungarian tax authority's practice was therefore consistent with the VAT directive and VAT principles.

The CJEU also said that before denying a deduction of any input tax the taxable person has paid by mistake, the tax authority is neither required to find out whether the suppliers are able to correct those invoices and refund the VAT to the taxable person, nor required to demand such corrections. The CJEU finds that the dispute over refunding the VAT paid by mistake between two parties to the transaction should be resolved in civil proceedings (by suing the supplier to recover the amounts paid by mistake). The supplier is allowed to seek a refund of VAT he has paid to the tax authority by mistake.

According to the CJEU, if VAT was accounted for by a supplier who finds it extremely difficult or impossible to refund the VAT to the customer, especially if the supplier is insolvent, it is crucial that the customer should be able to file a refund claim directly against the tax authority. The CJEU said member states should provide for measures and procedural rules to allow customers to recover any VAT invoiced by mistake.

In view of the CJEU findings, we encourage customers to carefully assess whether they have been party to any transactions attracting domestic reverse-charge VAT, and to pay special attention to supplier invoices in order to correct any mistakes early. Otherwise it could be difficult to deduct input tax on the acquired goods or services.

Latvian taxable persons face risk from two aspects. First, the reverse-charge VAT rules and the State Revenue Service's comments are not clear enough, often causing disputes between suppliers and customers over applying the correct VAT scheme. Second, Latvian legislation fails to lay down measures and procedural rules to allow customers to recover any VAT invoiced by mistake in similar disputes.

<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax