



---

ILIEVA VOUTCHEVA & CO. LAW FIRM

**The Court of Justice of the European Union held a landmark decision from June 21, 2012, regarding tax authorities' prerogatives to refuse or restrain the right to value added tax refund**

By its decision from June 21, 2012 in relation to joint cases C-80/11 and C-142/11, the Court of Justice of the European Union (hereinafter referred to as the "CJEU") gave an answer to some prejudicial questions put before CJEU, and thus made an important step forward to a better understanding of the common Value Added Tax ("VAT") system.

In this landmark decision CJEU adjudicates on two relatively similar cases put before it. The cases concern provision of services (CMP) and the delivery of goods. The questions they raise may be summarized in the following way:

- Is it possible for the tax authorities not to recognize or to restrain the right to deduction of a tax credit because of the fact that the person who issued the invoice or some of his/her suppliers have committed a violation, without proving that the taxable person at stake knew about this violation or participated in it.
- Is it possible for the tax authorities to refuse the right to deduction of a tax credit, because of the fact that the recipient of a delivery, for which he/she requests deduction, has not verified if the person who issued the invoice had the quality of a taxable person, had owned the goods, subject matter of the delivery, was able to deliver them and fulfill his/her obligations for declaring and payment of VAT;
- Is it possible for the tax authorities to refuse to recognize the right to deduction of a tax credit, because of the fact that the taxable person does not possess any other documents, but the invoice, based on which the existence of the aforementioned circumstances is established.

The CJEU has summarized all these prejudicial questions by actually answering the following question: Is it possible for a taxable person, who exercises his/her right to VAT refund to be held responsible without fault in relation to the invoices he/she received, thus establishing for him/her the duty to check the authenticity of the invoices, issued by his/her contractors.

Prior to answering these questions, the CJEU has decided to underline the fact that the constant case law has definitively established that the right of all taxable persons to a VAT refund of owed or paid VAT for goods purchased by them and for services, provided to them,



---

ILIEVA VOUTCHEVA & CO. LAW FIRM

remains a fundamental principle of the common VAT legislation as introduced by the European Union. This principle has always been confirmed by the CJEU. Along with the aforesaid, the CJEU has reminded as well that the fight against fraud, the fight against tax evasion and against all kinds of tax legislation abuse is a purpose, recognized and promoted by Directive 2006/112.

In response to all questions asked, the CJEU ruled in the following way:

- No national practice can be admitted, according to which the tax authorities may refuse to recognize to the recipient of a delivery the right to refund of owed or paid tax for the services provided because of the fact that the supplier or any of his/her suppliers (subcontractors) have committed violations, without proving, on the basis of objective data that the taxable person knew or had been obliged to know that the transaction in which he/she wishes to use tax refund is part of a fraud, performed by the supplier or any other economic operator, participating in the chain of deliveries.

The conclusion which has to be made, based on this answer of the CJEU is that to all taxable persons the right to a VAT refund could be refused only if based on objective facts it is proven that the said taxable persons, who have received the goods or services, reason of the right to VAT refund, knew or had been obliged to know that the transaction is part of a fiscal fraud, performed by the provider or another economic operator on the commercial chain. If the taxable person knows or had been obliged to know that a VAT fraud is being performed, he/she is considered participating in it.

The burden of proof of these circumstances is borne by the tax authorities, and the procedure of proving that the taxable person has known or has had to know that a fraud was being performed needs to be done based on objective data. Thus, the CJEU has decided that the taxable person has no duty to check for potential frauds, performed by his/her contractors. It is a duty of the tax authorities to seek to achieve this purpose. They should find all breaches and VAT frauds and impose sanctions to the taxable person, responsible for it.

However, this does not mean that the taxable person needs not to act in good faith and to put all the reasonable commercial endeavours by checking that the transactions in which he/she participates are not a part of a fraud, and this check depends on the particular case.

- The second answer that CJEU provides is that no national practice is admitted, according to which the tax authorities may refuse to recognize the right to a VAT refund because of

# IVCo.

---

ILIEVA VOUTCHEVA & CO. LAW FIRM

the fact that the recipient of a delivery has not checked if the invoice issuer (the supplier) has the quality of a taxable person, possessed the goods, subject matter to the delivery, was able to deliver them and has performed his/her duties regarding the VAT declaration submission and VAT;

- Besides that, no national practice is admitted, according to which the tax authorities may refuse the right to VAT refund, because of the fact that the recipient does not possess other documents, but the invoice, based on which the existence of the aforementioned circumstances is established and the taxable person does not have knowledge of potential violations or fraud, performed by the supplier.

In our opinion, the conclusions, which may be done of this decision of the CJEU are the following:

- The right to VAT cannot be refused regarding invoices, issued by the supplier, who has not proven the existence of enough personnel and technical capacity for the delivery, if the recipient possesses a delivery document, in accordance with the requirements of articles 114 and 115 of the Bulgarian VAT Act and has received the goods, respectively the services, subject matter of the delivery at stake.
- The right of VAT refund cannot be refused regarding deliveries for which the tax authorities has not proven, based on objective data that the delivery recipient knew or had had to know that his/her supplier or another supplier within the chain of deliveries has committed a VAT fraud. In the Bulgarian VAT Act there is an analogous text, in art. 177. For its correct application the Executive Director of the National Revenue Agency has issued Instruction № 24-00-9/30.09.2009 and the following Clarifications № 2430175/22.02.2008; № 5-23-23-85/11.06.2009.

*The article above is intended for information purposes only by drawing your attention to the newest practice of the European Court. It should not be construed as (binding) legal advice. For a thorough understanding of the subjects covered and prior acting on any issue discussed we kindly recommend Readers consult Ilieva, Voutcheva & Co. Law Firm attorneys at law.*