

Enforceability of VAT Refund Claiming

As well-known from the news, pursuant to the judgement of the European Court of Justice rendered in the case no. C-274/10, promulgated on 28 July, 2011, Hungary's provision [Section 186 (2)-(4) of the Act on VAT] precluding claiming VAT refund in connection with unsettled procurements is found not to be in accordance with the Community law. Hungary acknowledged the judgement of the European Court of Justice and abrogated the disputed provision and adopted the following regulation.

The tax amount in respect of which the taxpayer, prior to the commencement of effect of the amendment act (27 September 2011), in his VAT return last due and filed under the abrogated Section 186 (2)-(4) of the Act on VAT was not able to exercise his right to claim refund solely because of the amounts being shown as tax on the financially unsettled procurements, may seek refund through an application filed – in a form specifically for this purpose – with the State Taxation Authority until 20 October 2011 or irrespective of the deadline of 20 October 2011 may show it in his tax return in compliance with the statutory provisions applicable by him as items decreasing the amount of payable tax or assert his right to claim refund therein.

What Does Last Due and Filed VAT Return Mean?

- for those filing tax returns annually, in respect of year 2010 tax return due until 25 February, 2011 duly filed within the deadline No. 1065;
- for those filing tax returns quarterly, the second quarterly tax return due until 20 July, 2011 duly filed to deadline no. 1165;
- for those filing tax returns on a monthly basis, the latest tax return prior to the amendment act taking effect, due until 20 September referring to August month.

Possible ways of enforcing right to claim refund	Deadline available for enforcement
by way of filing an application formulated by the State Tax Authority specifically for this purpose, which may take place in the application Forms 1065-KER and 1165-KER established for the otherwise used Forms 1065 or 1165	October 20, 2011 subject to forfeiture deadline (!)
in the framework of the filing of tax return in compliance with the prevailing laws, in a subsequent tax return (by way of Forms 1165-06)	the submission deadline for the first subsequent tax return or within the statutory limitation period, provided that the conditions of claiming refund are satisfied.

In Which Cases Will the Application Be Rejected?

- if it arrives after the deadline has passed
- if – with the amount of tax amount respective to the financially unsettled procurements taken into account - the eligibility of the taxpayer for claiming refund would have been



commenced earlier, but the taxpayer did not claim refund according to his or her personal decision.

What Further Possibilities Arise For a Company In Addition to the Enforcement of Claiming Refund?

Further to the enforcement of claiming refund, a taxpayer, in its claim submitted up to the 20th day of October, 2011 – for the exclusive purpose of revision of the earlier determined legal consequences prior to the entry into force of the amending act – may seek repeated audit from the state tax authority providing that pursuant to the previous regulation, a legally binding resolution ruled that tax fine or default interest be paid by it. Such revision request may be submitted irrespective of the enforcement of the right to claim refund.

The above possibilities may help Your business undertaking in case You have accumulated significant amount of debts to your suppliers and therefore You were not able to enforce your right to claim refund.

If, however You have no debts to suppliers or You do, but You also have **significant accounts receivable, then the newly evolved situation enables You to reduce the amount of Your accounts receivable.**

Although the effective Act on VAT or the Act on the Order of Taxation does not enable – apart from certain special exceptions – that the amount of VAT claimed to be refunded could be assigned by the taxpayer to another business undertaking, it can be arranged within the framework of a separate agreement that at least the VAT content of your receivables could be made available to You or, that in case of non-performance your claim could be enforced before court.

In case we can be of assistance either in terms of the enforcement of your right to claim refund or a submission of a revision request or the management of accounts receivable please contact us.

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