*May 2014*

# Focus of the month

## Refusal to reimburse VAT in Germany

Rules governing the form of VAT refund claims onto the electronic portal

Since 1 January 2010, the procedure for the reimbursement of VAT borne in European Union countries has been made paperless in accordance with the provisions of Directive 2008/9/EC dated 12 February 2008.

Since then, companies established in the European Union have to submit their VAT reimbursement applications via an electronic tele-procedure portal made available to them by their respective national tax authorities.

This new procedure, which was intended to be a real simplification for businesses, at times becomes a source of difficulty in obtaining the refund of VAT paid abroad.

In effect, some European tax authorities have a reading and application of the EU laws which is too strict, leading sometimes to an effect contrary to the objective pursued by these texts.

By way of illustration, we can cite the German tax authorities who exclude invoices included in VAT reimbursement applications submitted via an electronic portal from VAT reimbursements for the sole reason that the full address of the supplier/invoice provider in question has not been correctly entered on the electronic portal even though the invoices are attached electronically to the application. For the German tax authorities, if a claimant, when submitting a refund claim, merely enters the town in which the provider who issued the invoice for which the claimant is asking the refund is based, then the VAT on that invoice cannot be reimbursed.

In order to justify this stance, the German tax authorities apply a literal and strict reading of articles 7 and 8 or the above directive.

These articles state that:

*"Article 7*

*To obtain a refund of VAT in the Member State of refund, the taxable person not established in the Member State of refund shall address an electronic refund application to that Member State and submit it to the Member State in which he is established via the electronic portal set up by that Member State.*

*Article 8*

*[...]*

*2. In addition to the information specified in paragraph 1, the refund application shall set out, for each Member State of refund and for each invoice or importation document, the following details:*

*(a) name and full address of the supplier; [...]"*

***The question to ask is:***

Is the German tax authority's decision not too restrictive with regard to the principle of VAT neutrality?

***Our comments:***

Obviously, a literal reading of articles 7 and 8 previously cited leads to the exclusion of invoices for which data entry on the portal was not completed from VAT reimbursements. It seems to us that this constitutes an additional administrative burden on taxpayers, thus taking us away from the simplification which should predominate with the introduction of the new reimbursement procedure.

In order to avoid any rejections solely on the grounds of form, the greatest care has to be taken in the preparation of applications and the use of an expert such as TEVEA International offers a number of guarantees.

In addition, we will not resign ourselves to enduring the authorities' manifestly excessive attitudes. European case-law can help us in this respect. On a number of occasions, the Court of Justice of the European Union has pointed out that the right of VAT deduction (reimbursement) is a fundamental right of taxpayers. The right to deduct VAT may not be called into question on the sole basis that the claimant has failed to comply with certain formal requirements when the substantive requirements have been satisfied.

The ECJ reminded us of this fundamental principle in the ECJ judgement, Case C-284/11 dated 12 July 2012, points 62 and 71, in these terms:

*"[...] the fundamental principle of VAT neutrality requires deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. Where the tax authority has the information necessary to establish that the taxable person is, as the recipient of the supplies in question, liable to VAT, it cannot impose, in relation to the right of that taxable person to deduct that tax, additional conditions which may have the effect of rendering that right ineffective for practical purposes (see Ecotrade, paragraphs 63 and 64; Nidera Handelscompagnie, paragraph 42; and Case C 438/09 [2010] ECR I-14009, paragraph 35).*

*As is apparent from the case-law referred to in paragraph 62 of this judgement, the deduction of input VAT must, as a rule, be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. The case may be different if non-compliance with such formal requirements effectively prevents the production of conclusion evidence that the substantive requirements have been satisfied (see, by analogy, Case C 146/05 Collée [2007] ECR I 7861, paragraph 31)."*

In our case, since the invoices are attached to the application, as required by the German tax authorities, the latter have at their disposal the necessary information for establishing the provider/supplier's identity. They therefore have all the elements needed to judge whether the substantive requirements have been satisfied.

Consequently, on the basis of this case-law, TEVEA International systematically contests any rejection delivered by the German tax authority on the basis previously described. The German tax authorities have not yet responded to the arguments that we have put forward, but we believe that the objective intended by the legislator cannot have been to put in place a VAT reimbursement system in which the act of forgetting to enter a postcode should be grounds for putting the right to VAT deduction into question.

If you have encountered a similar problem then please do not hesitate to contact us. We will consider together what solutions may be found.

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