

April 8, 2021

Taxpayers who have been making intra-Community acquisitions of goods and import services after January 1, 2017, who settled VAT on this account after the expiry of the 3-month period provided for in Polish regulations and incurred the burden of interest on VAT due, can now claim their return with interest more easily.

## Judgment of the Court of Justice of the EU of March 18, 2021 – formal dimension

The above is a result of the judgment of the Court of Justice of the EU of March 18, 2021 in case C-895/19 A. against the Director of the National Revenue Information, in which the CJEU confirmed that the principle of VAT neutrality cannot be limited for formal reasons unrelated to the construction of VAT.

Thus, art. 86 paragraph 10b point 2 of the VAT Act was found to be inconsistent with the principle of VAT neutrality, pursuant to which the right to reduce the amount of tax due by the amount of input tax arises in the settlement for the period in which the tax obligation arose in relation to the purchased goods, provided that the taxpayer receives an invoice documenting intra-Community acquisitions of goods and takes into account the tax amount due for intra-Community acquisitions of goods in tax declarations, in which he is obliged to settle this tax, no later than within 3 months from the end of the month in which the tax obligation arose in relation to the purchased goods.

In practice, this provision meant that in the event of a VAT settlement of an intra-Community acquisition of goods after 3 months from the date on which the tax obligation arises:

- input VAT was settled on an ongoing basis,
- output VAT was shown retroactively, i.e. in the declaration appropriate for the month in which the tax obligation arose, which could have resulted in the need to pay interest on tax arrears

## The practical dimension of the CJEU judgment

The ruling of the CJEU means that taxpayers may demand the reimbursement of their overpayments for the period from January 1, 2017, with interest from the date of payment. However, it is advisable to apply for an overpayment refund as soon as possible so as not to lose the chance for the full interest rate.

Although the CJEU judgment concerns directly intra-Community acquisition of goods, the Polish regulation on the import of services imposes similar requirements as to the use of a fully neutral right to deduct VAT. For this reason, in our opinion, taxpayers have the right to demand the reimbursement of interest paid also in this case.

## What should be done to recover the VAT overpayment?

1. Analyze the settlements and the possibility of recovering interest in relation to the intra-Community acquisition of goods and import of services;
2. Prepare an application for a refund / declaration of overpayment;
3. Verify corrections of VAT settlements.

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