



ECJ CASES RAISED IN 2020

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Case Number	Status	Date Judgement/ Opinion	Parties	Country/Court	Subject	Description	Link
C-182/20	Application	n/a	Administrația Județeană a Finanțelor Publice Suceava and Others	Curtea de Apel Suceava - Romania			Link

C-156/20	Application	n/a	Zipvit	UK	Deduction	<p>EY: Zipvit Limited v HMRC</p> <p>On 1 April 2020 the Supreme Court released its judgment in the case of Zipvit Limited v HMRC.</p> <p>This case concerns a claim by Zipvit for input tax which it claimed to have incurred on certain postal services provided by Royal Mail. The appeal raised the issue of whether a taxable person, who received supplies of services which were at the material time treated by Royal Mail as exempt under UK law, but which were properly chargeable to VAT under EU law, was entitled to an input tax credit in respect of those supplies. Both Royal Mail and HMRC believed that the supplies made by Royal Mail to Zipvit were exempt from VAT and Royal Mail did not therefore issue VAT invoices to Zipvit. The contract between Zipvit and Royal Mail was silent on VAT and the invoices indicated that the supplies were exempt. A subsequent CJEU judgment concerning the scope of the postal services exemption resulted in a clutch of claims for input tax by Royal Mail's customers. HMRC accepted, for the purposes of the appeal, that the postal services in question were properly standard-rated under both UK and EU law.</p> <p>The question was whether Zipvit was entitled to deduct input tax in respect of certain standard-rated supplies to it from Royal Mail, notwithstanding that Royal Mail did not in fact pay VAT on those supplies, the parties thought the supplies were exempt and the supplies were shown as VAT exempt on the invoices.</p> <p>In this latest judgment, the Supreme Court (Court) has unanimously decided that the legal position under the VAT Directive is not clear. The Court noted that in a case involving an issue of EU law which is unclear, it is obliged to refer that issue to the CJEU to obtain its advice on the point.</p> <p>The Court noted that Zipvit had appealed on two issues: first, the 'due or paid' issue, and second, the invoice issue, neither of which can be considered so obvious and clear to leave no scope for reasonable doubt. The 'due or paid' issue arises out of Article 168(a) which provides that a trader who is a taxable person has an entitlement to deduct from VAT which he is liable to pay "the VAT due or paid...in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person". Zipvit contends that the commercial price it paid Royal Mail for the supplies of postal services must be treated as having contained an element of VAT, even though the invoice purported to say that the services were exempt from VAT. Alternatively, even if this embedded element of VAT is not to be regarded as having been "paid", it should be regarded as being "due". HMRC contend that there is nothing in the Directive which requires or justifies retrospective re-writing of the commercial arrangements</p>	Link
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					<p>between Royal Mail and Zipvit. Royal Mail did not issue further invoices to demand payment of VAT, cannot be compelled to issue such invoices, and has not accounted to HMRC for any VAT in respect of the services. HMRC could not act to compel Royal Mail to account for any VAT in respect of the supply of services. As the courts have previously found, if Zipvit were to succeed it would gain an unmerited financial windfall at the expense of the taxpayer.</p> <p>Considering the invoice issue, the Court noted that Zipvit claims that CJEU case law indicates that there is an important difference between the substantive requirements to be satisfied for a claim for input tax and the formal requirements that apply in relation to such a claim. The approach is strict for the substantive requirements, but departure from the formal requirements is permissible if alternative satisfactory evidence of the VAT which was paid or is due can be produced. Zipvit contends that it has produced alternative satisfactory evidence of the VAT paid, in the form of payment of the embedded VAT. However, HMRC assert that the regime in the Directive requires importance to be attached to the requirement of the production of an invoice showing that VAT is due and in what amount. A valid claim for the deduction of input tax cannot be made in the absence of a compliant VAT invoice</p> <p>In its judgment the Court has made an order for a reference and set outs its questions to the CJEU:</p> <p>Where (i) there has been a misinterpretation of EU VAT law resulting in a standard rated-supply being treated as exempt, (ii) the contract between the supplier and the trader stated that the price for the supply was exclusive of VAT and provided that if VAT were due the trader should bear the cost of it, (iii) the supplier never claimed and can no longer claim the additional VAT due from the trader, and (iv) the tax authority cannot or can no longer (through the operation of limitation) claim from the supplier the VAT which should have been paid, is the effect of the Directive that the price actually paid is the combination of a net chargeable amount plus VAT thereon so that the trader can claim to deduct input tax under article 168(a) as VAT which was in fact 'paid' in respect of that supply?</p> <p>Alternatively, in those circumstances can the trader claim to deduct input tax under article 168(a) of the Directive as VAT which was 'due' in respect of that supply?</p> <p>Where EU VAT law has been misinterpreted with a standard-rated supply being wrongly treated as exempt with the result that the trader is unable to produce to the tax authority a VAT invoice which complies with article 226(9) and (10) of the VAT Directive in respect of the supply made to it, is the trader entitled to claim a deduction of input tax under article 168(a)?</p>	
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						<p>Is it relevant to investigate whether the supplier would have a defence, whether based on legitimate expectation or otherwise, arising under national law or EU law, to any attempt by the tax authority to issue an assessment requiring it to account for a sum representing VAT in respect of the supply? Is it relevant that the trader knew at the same time as the tax authority and the supplier that the supply was not in fact exempt, or had the same means of knowledge as them, and could have offered to pay the VAT which was due in respect of the supply (as calculated by reference to the commercial price of the supply) so that it could be passed on to the tax authority, but omitted to do so?</p> <p>Comment: The Court has referred both substantive issues to the CJEU. Zipvit was designated as a lead case, with some 140 related appeals and total claims amounting to something in the region of £1 billion. The protracted litigation will be disappointing to those that had been hoping for a favourable decision from the Court.</p>	
C-154/20	Application	n/a	Kemwater ProChemie	CZ	Deduction	<p>The Czech Supreme Administrative Court made a reference for a preliminary ruling to the ECJ related to the right to deduct the VAT on services supplied by an unknown entity.</p>	Link
C-141/20	Application	23/03/2020	Norddeutsche Gesellschaft für Diakonie	Bundesfinanzhof - Germany		Information not available	Link
C-108/20	Application	27/02/2020	Finanzamt Wilmersdorf	DE	Deduction, Fraud	<p>VAT on fraudulent transactions recoverable without participation, connection, encouragement and/or facilitation?</p> <p>EY: A German referral asking whether Articles 167 and 168(a) of the VAT Directive are to be interpreted as precluding national law under which VAT deduction is denied where a taxable person knew of should have known of tax fraud with an earlier transaction, where the taxable person did not participate in and was not connected to the fraud and did not encourage or facilitate it?</p>	Link
C-90/20	Application	24/02/2020	Apcoa Parking Danmark	Højesteret - Denmark	Economic activity	<p>VAT on controlling fees for violation of private parking regulations?</p> <p>EY: A Danish referral asking whether Article 2(1)(c) of the VAT Directive is to be interpreted as meaning that control fees for parking infringements on private property constitute consideration for a taxable supply?</p>	Link

C-81/20	Application	12/02/2020	Mitliv Exim	Tribunalul București - Romania	Penalty	VAT evasion, sanctioning measures in both administrative and criminal proceedings	Link
C-80/20	Application	12/02/2020	Wilo Salmson France	Tribunalul București - Romania		EY: A Romanian referral regarding the interpretation of Article 167 of the VAT Directive, read in conjunction with Article 178. Is there a distinction between the moment the right of deduction arises and the moment it is exercised with regard to the way in which the VAT system operates; whether the right to deduct VAT may be exercised where no (valid) tax invoice has been issued for the purchase of goods? Can an application for a refund be made in respect of VAT which became chargeable prior to the 'refund period' but which was invoiced during the refund period? What are the effects of the annulment of invoices and the issuing of new invoices? Can national legislation make the refund of VAT conditional on the chargeability of VAT in a situation where a corrected invoice is issued during the application period?	Link
C-59/20	Application	04/02/2020	DBKAG	Bundesfinanzgericht - Austria		EY: An Austrian referral asking whether Article 131(1)(g) of the VAT Directive is to be interpreted as meaning that, for the purpose of the tax exemption provided for by that provision, the term 'management of special investment funds' also includes the granting by a third-party licensor to an investment management company (IMC) of a right to use specialist software specifically designed for the management of special investment funds where, as in the case in the main proceedings, that specialist software is intended exclusively to perform specific and essential activities in connection with the management of the special investment funds but runs on the technical infrastructure of the IMC and can perform its functions only subject to the minor participation of the IMC and subject to ongoing recourse to market data provided by the IMC?	Link
C-58/20	Application	04/02/2020	K	Bundesfinanzgericht - Austria		EY: An Austrian referral asking whether Article 135(1)(g) of the VAT Directive is to be interpreted as meaning that the term 'management of special investment funds' also covers the tax-related responsibilities entrusted by the management company to a third party, consisting of ensuring that the income received by unit-holders from investment funds is taxed in accordance with the law?	Link
C-57/20	Application	n/a	Commission v Germany	DE		EY: Action brought by the European Commission claiming that the Court should declare that, by applying the flat-rate scheme to all farmers as a rule regardless of whether the application of the normal VAT arrangements or the special scheme for small enterprises would give rise to difficulties for them, and by applying a flat-rate compensation tax rate which leads to a structural over-compensation of the input tax paid, the Federal Republic of	Link

						Germany has infringed its obligations under Articles 296(1) and 299 of the VAT Directive.	
C-48/20	Application	n/a	P	PL (Naczelny Sąd Administracyjny - Poland)	Input VAT	<p>Recovery of input VAT on fuel invoices with unduly shown VAT issued by a taxpayer acting in good faith.</p> <p>EY: A Polish referral asking whether the VAT Directive and the principle of proportionality preclude national legislation which denies VAT deduction against invoices incorrectly issued for the supply of exempt services but erroneously interpreted as taxable, based on an interpretation provided by the tax authorities and common practice at the time of the transactions?</p>	Link
C-46/20	Application	n/a	Finanzamt G	DE	Allocation, input VAT	<p>Input VAT, allocation of mixed used purchases to the business</p> <p>EY: A German referral asking whether Article 168(a) of the VAT Directive, read in conjunction with Article 167, conflicts with national law which precludes VAT deduction where a business is entitled to choose the allocation of the costs against private and business use at the time of purchase but a decision on the allocation is not made before the expiry of the deadline for submission of the annual VAT return?</p>	Link
C-45/20	Application	n/a	Finanzamt N	DE	Allocation, input VAT	<p>Input VAT, allocation of mixed used purchases to the business</p> <p>EY: A German referral asking whether Article 168(a) of the VAT Directive, read in conjunction with Article 167, conflicts with national law which precludes VAT deduction where a business is entitled to choose the allocation of the costs against private and business use at the time of purchase but a decision on the allocation is not made before the expiry of the deadline for submission of the annual VAT return?</p>	Link

C-21/20	Application	n/a	Balgarska natsionalna televizia	BG	Economic activity/input VAT	<p>Public service television broadcasting a supply of services for consideration? How to determine which input VAT can be claimed?</p> <p>Deloitte: The Bulgarian High Court asks the CJEU in the Balgarska natsionalna televizia case (C-21/20) whether public broadcasting services are services provided for consideration and if so, if a VAT exemption would apply to the broadcasting services provided. Moreover, the Court asks whether the financing of the services is relevant for determining whether there is a right to deduct input VAT, considering the public broadcasting service is (largely) financed through subsidies.</p> <p>EY: A Bulgarian referral asking whether the supply of audio-visual media services to viewers by the public television broadcaster should be regarded as a service supplied for consideration within the meaning of Article 2(1)(c) of the VAT Directive if it is financed by the State in the form of subsidies, with the viewers paying no fees for the broadcasting? If answered in the affirmative, does the service qualify for exemption pursuant to Article 132(1)(q)? If it is considered that the activity consists of taxable and exempt supplies, having regard to its mixed financing, what is the scope of the right to deduct input tax?</p>	Link
C-9/20	Application	n/a	Grundstücksgemeinschaft Kollaustraße 136	DE	Tax point	<p>May a Member State allow to claim input VAT in a different period than that in which output VAT became due?</p> <p>EY: A German referral asking, inter alia, whether the right to deduct VAT in accordance with Article 167 of the VAT Directive, without exception, always arises at the time when the deductible tax becomes chargeable, or whether Member States may derogate from this principle?</p>	Link
C-7/20	Application	n/a	Hauptzollamt Münster	DE	Import	<p>"import" of car from Turkey to Germany for private journeys for a few months</p> <p>EY: A German referral asking whether the second subparagraph of Article 71(1) of the VAT Directive is to be interpreted as meaning that Article 87(4) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 establishing the EU Customs Code can be applied mutatis mutandis (the basic point remains the same) to the recovery of VAT (import turnover tax)?</p>	Link

C-4/20	Application	n/a	ALTI	BG	Liability/Penalty/Interest	<p>Does the joint liability of a customer for unpaid VAT by the supplier also include default interest?</p> <p>EY: A Bulgarian referral asking whether Article 205 of the VAT Directive and the principle of proportionality are to be interpreted as meaning that the joint and several liability of a taxable person for a VAT debt, being the recipient of a taxable supply where the supplier has failed to account for VAT, extends to the obligation to pay default interest?</p>	Link
C-1/20	Application	n/a	Finanzamt Wien	AT	Exemption	<p>Lawyers as Court-Appointed Guardians; VAT Exemption on Welfare</p> <p>EY: An Austrian referral asking whether Article 132(1)(g) of the VAT Directive is to be interpreted as meaning that services rendered by a lawyer as a court-appointed trustee – to the extent that they are not typical acts of the legal profession – are exempt from VAT?</p>	Link