



ECJ Case C-335/19 - Bad Debts

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In brief

On the 15th of October 2020, the ECJ issued its decision on ECJ case C-335/19 (E. sp. z o.o. sp. k. V Minister Finansów) which relates to the conditions for bad debt relief claims.

In detail

Facts

E is a VAT registered company in Poland which provides tax advisory services. A customer, which is also VAT registered, is currently in liquidation and its invoice for services provided by E has not been settled. For this reason, E submitted to the Minister for Finance of Poland a request for a VAT ruling in order to ascertain whether it is entitled to a reduction in the VAT taxable amount in line with Article 90 of the EU Directive 2006/112 which states that “1. *In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States*” and “2. *In the case of total or partial non-payment, Member States may derogate from paragraph 1*”.

The Minister of Finance of Poland replied to E’s request in the negative because one of the conditions laid down in Article 89a of the Polish VAT Law is not satisfied, which is the condition that the debtor should not be subject to insolvency or winding up proceedings. E appealed on the ground that the above provision of the Polish VAT Law infringe the requirements resulting from the Directive.

Questions

The Polish court referred the following questions to the ECJ:

(1) Do the provisions of Directive 2006/112, – and in particular Article 90(2) thereof – having regard to the principles of fiscal neutrality and proportionality, permit the introduction into national law of a restriction on the ability to reduce the taxable amount in the event of partial or total non-payment by reason of the specific tax status of the debtor and the creditor?

(2) In particular, does EU law preclude the introduction of a rule in national legislation which provides for the option of taking advantage of “bad debt relief” only on condition that on the date on which the service or goods are supplied and on the day preceding the date on which the tax return adjustment is filed in order to benefit from this relief:

- the debtor is not subject to insolvency or liquidation proceedings,
- the creditor and debtor are both registered as active VAT taxpayers?

Main Arguments

The principle of neutrality of VAT means that the trader, as tax collector on behalf of the State, is entirely to be relieved of the burden of tax due or paid in the course of his economic activities which are themselves subject to VAT. Any restrictive conditions set by Member States in relation to bad debt relief claims should be justified by the need to take into account the uncertainty as to whether the non-payment is definitive, but their power of derogation cannot extend beyond that uncertainty. For this reason, the right for a reduction of the VAT taxable amount should be granted when the taxpayer demonstrates a reasonable probability that the debt will not be honoured.

Judgement

Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation which makes the reduction of the taxable amount for the purposes value added tax (VAT) subject to the condition that, on the day of delivery of the goods or provision of the services and on the day preceding that on which the adjusted tax return seeking that reduction is filed, the debtor is registered as a taxable person for the purposes of VAT and is not the subject of insolvency or winding up proceedings, and that, on the day preceding the date of filing of the adjusted tax return, the creditor is itself still registered as a taxable person for the purposes of VAT.

The takeaway

This ECJ judgement is important because it provides for a more flexible interpretation in relation to the conditions that need to be fulfilled for a bad debt relief claim to be made especially regarding the period within which the claim can be made.

Businesses deprived of any bad relief claims by the more stringent provisions of the Cyprus VAT law should re-examine whether they can make such additional claims following this decision.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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