VAT EUROPEAN CASE·LAW

# On the late submission of invoices in VAT refunds (case C-294/19)

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# FACTS (I)

**Facts**

In its judgment today, 9-9-2021, the ECJ has analysed the possibility of bringing to the courts invoices non-submitted to the tax authorities in refund requests.

Auto Service, a German company, submitted two **VAT refund** requests from **non-established taxable persons** to the Spanish tax authorities.

The aforementioned authorities sent two **requests** to Auto Service to send the originals of the invoices on which it was based to request said refunds, the detailed clarification of its operations and the destination of the goods or services to which its request referred. Once the refund requests were rejected, Auto Service filed an administrative appeal against said authorities and provided some invoices issued for the vehicle leasing services that it performed, but not the invoices on which the refund request was based.

Before resolving this appeal, a new request was addressed to the entity requesting clarifications. Auto Service did not respond to this new request for information. As it did not have the required documents, the Spanish Tax Administration issued a resolution rejecting the appeal and confirming the refusal of the refund.

# FACTS (II)

Auto Service filed administrative claims with the **Central Administrative Court, providing at this stage purchase invoices**, as well as other documentation. This Court rejected Auto Service's claims, based on the fact that the relevant evidence had to be provided before the competent tax management office and it was not possible to present it within the administrative claim procedure. Auto Service filed an appeal with the National Court, which was dismissed on the same grounds.

Once the judgment was appealed to the Supreme Court, it pointed out that the Spanish legal system obliges the courts to take into account the evidence that a taxpayer had not communicated to the tax administration in the administrative investigation phase of his file. It annulled the judgment of the National Court and ordered that the matter be returned to the aforementioned jurisdictional body, so that it could resolve it in view of the evidentiary material incorporated into the process. Having certain doubts as to the **procedure to be followed**, the National Court raised a question for a preliminary ruling.

# REASONING (I)

1st. On a preliminary basis, Auto Service alleged **inadmissibility**, arguing that the issues raised had already been resolved by the Spanish Supreme Court.

Considering that the questions referred for a preliminary ruling are directly related to the facts of the dispute and that, according to settled case law, a national provision by virtue of which the courts that do not decide in the last instance are bound by the assessments made by the **Supreme courts** cannot deprive those of the power to submit to the ECJ questions of interpretation of the UE Law to which such legal evaluations refer (judgment of 5-3-2019, Eesti Pagar, C-349/17, and cited jurisprudence), has admitted the question referred.

# REASONING (II)

2nd. The first substantive question was aimed at elucidating whether the provisions of the Eighth VAT Directive and the principles of the EU law, in particular that of tax neutrality, preclude the denial of a request for a VAT refund when the taxable person has not submitted to the Tax Administration, within the established deadlines, not even at its request, the documents and information required by that Directive, regardless of whether the taxpayer submits, on his own initiative, such documents on the occasion of the administrative claim or subsequent judicial appeal.

After reiterating the **general principles** regarding the deduction of VAT (its relevance as a structural element of VAT and the inadmissibility of its refusal due to the mere breach of formal requirements when the materials are met, which can only be excepted when the breach of such formal requirements have the effect of preventing the provision of certain proof that the material requirements have been met (judgment of 18-11-2020, Commission/Germany, C-371/19, and case law cited), the ECJ has recalled that arts.3 and 4 of the Eighth VAT Directive show that the taxable person can only benefit from the refund if he complies with the obligations established in said articles, which include the presentation of the originals of the invoices or of the import documents of the transactions subject to VAT in the Member State of return.

# REASONING (III)

It has also been insisted that, on two occasions, the Spanish tax administration required the claimant to provide additional evidence to her requests, in particular, the invoices on which they were based.

The company did not present the required documents, which were presented by Auto Service during the proceeding before the Central Administrative Court.

With these premises, the litigation was not about non-compliance with formal requirements that prevented providing proof of the material requirements of the right to a VAT refund, but about the **date** on which such proof can be provided.

The ECJ has recalled that it had already declared that the provisions of the VAT Directive do not conflict with a national regulation by virtue of which the right to deduct VAT can be denied to taxable persons who have incomplete invoices, even when these are have been completed with the presentation of information intended to prove the reality, nature and amount of the invoiced operations **after the Tax Administration has adopted a resolution** denying the right to deduction (judgment of 5/8/2013, Petroma Transports et al. , C-271/12).

By analogy, it has been understood that the provisions of the Eighth VAT Directive do not conflict with a national regulation by virtue of which the right to a VAT refund may be denied when a taxable person does not provide, without reasonable justification, and despite the information requirements practiced, the documents that allow to prove that the material requirements are met to obtain said refund before the tax administration adopts its resolution. However, those same provisions do not preclude Member States from allowing the submission of such evidence after the decision has been taken.

# REASONING (IV)

It has been added that the principle of **procedural autonomy** of the Member States, which enables the above, must respect, however, the principles of equivalence effectiveness, which seemed to have been respected:

a) **Effectiveness**, since the possibility of submitting a request for refund of VAT without any time limitation would be contrary to the principle of legal certainty (judgment of 14-2-2019, Nestrade, C-562/17, and case law cited).

This same principle is respected when the tax authorities, as is the case, require the necessary information on two occasions, within adequate time limits, for which reason it can be concluded that said tax administration employed, unsuccessfully, the necessary diligence to obtain the necessary evidence.

b) **Equivalence**, which requires that the national procedural provisions that regulate the refund of VAT be no less favourable than those that regulate similar situations subject to domestic law.

# CONCLUSION

The ECJ has ended up by stating that the provisions of the Eighth Directive and the principles of Union law, in particular, tax neutrality, do not preclude the **denial** of a request for a VAT refund when the taxable person does not has submitted to the Tax Administration, within the established **deadlines**, not even at its request, the **documents** required to prove their right to a VAT refund, regardless of whether the taxpayer submits, on his own initiative, such documents on the occasion of the administrative claim or of the judicial appeal filed against the refusal resolution, as long as the principles of equivalence and effectiveness are respected, an end that corresponds to the referring court to verify.

Additionally, it had been raised whether the practice followed by the claimant constitutes an **abuse of law**. Considering that the possible abuse is not related to the operations that gave rise to the refund requests, but rather to the procedure that surrounds the dispute relating to such request, and it is not established that its purpose was to obtain a tax advantage whose concession would be contrary to the purpose pursued by the relevant Union law provisions, the EJC has concluded that this conduct cannot, as such, be classified as an abusive practice.

## RELATED TOPICS (I)

1st. From the outset, it is possible to deny the right to deduct input VAT when the **formal breaches** of the taxpayers are such that they prevent the verification of compliance with the material requirements.

The ECJ continues in its line of accepting any breach of formal obligations, without further ado. More interesting is that this same conclusion extends to the **"late" submission** of the required formal supporting documents -invoices-. The ECJ somehow "revitalizes" judgment of 8-5-2013, Petroma Transports et al., C - 271/12, which seemed to have lost force, and insists on the need to provide the relevant documents before the end of the corresponding control procedure.

## RELATED TOPICS (II)

2nd. Equally interesting is the **difficult fit** for the tax authorities, in this case, the Spanish, of the **internal jurisprudence with the European one**.

The ECJ admits raising the question for a preliminary ruling even though there is already internal jurisprudence on the matter, which is not new. The real problem is what the tax authorities should do once the decision has been handed down, especially when it seems to be more restrictive than what has been concluded so far by the most national court, which in the Spanish case has come to admit this late submission of invoices with the sole limit of procedural bad faith. It does not seem like a simple question.

3rd. Finally, the question of **procedural bad faith** arises precisely, which the national court had raised, perhaps in too generic terms, and which the ECJ, thus raised, has discarded. It remains to be seen whether in a different way it would have entered its analysis.