



# CJEU: VAT is refundable if an invoice is issued late

CJEU decides in case C-80/20 (Wilo Salmson France) that EU law precludes the rejection of a VAT refund in certain period merely because this VAT became due in an earlier refund period, while a VAT invoice was issued in the later period.

Businesses should ensure that their purchase invoices meet at least minimum “substantial requirements” when they exercise their right to deduct input VAT and that they also obtain (retroactively) correct VAT invoices meeting all requirements.

Refusal of a VAT refund cannot be overturned by the subsequent cancellation and reissuing of the invoices.

It is important to follow the procedural requirements and stay in legal limitation periods, when submitting refund requests.

## Background

Under the EU VAT rules, a business/entrepreneur (VAT payer) may in principle deduct input VAT in so far as the costs are incurred for the purposes of its business activities. The purpose of the right to deduct VAT is to relieve businesses of any VAT costs (neutrality principle of VAT for business) and that right in principle may not be limited.

A purchaser can immediately deduct input VAT when the output VAT becomes payable for the seller, on the condition that the customer is in possession of a proper VAT invoice.

CJEU has stated in its case law that input VAT deduction should be allowed if the substantive requirements for VAT deduction are satisfied, even when some formal requirements are not fulfilled.

However, the VAT refund requests are subject to strict limitation periods, thus businesses should take care that they submit their requests within those time limits.

It is possible to appeal the decision of TA within time limits following certain procedural rules.

## Facts of case C-80/20

A French company purchased goods in Romania from ZES Zollner Electronic SRL (ZES). The goods stayed in Romania and therefore the Romanian VAT was due on the sale. In 2012, the legal predecessor of Wilo Salmson France SAS (“Wilo Salmson”) had submitted a so-called 8th Directive (2008/9) VAT refund request to the Romanian tax authorities (RTA) which was, however, denied on the grounds to do with the documents accompanying the application and the fact that the attached invoices apparently did not meet formal requirements. According to the RTA, there was no proof of payment of the invoices submitted, which was still a requirement under the law in force at the time.

ZES cancelled the invoices initially issued in 2012 and issued new invoices in 2015, based on which Wilo Salmson submitted another 8th Directive VAT refund request to RTA in 2015. The RTA refused this request as unfounded, stating that the applicant had not complied with Romanian law requirements for the refund and had already applied for a refund for the invoices. After Wilo Salmson appealed, the RTA stated that the VAT referred to in the refund application had already been the subject matter of a different refund application and that the

transactions for which the VAT refund application had been submitted concerned 2012, not 2015.

## Questions raised to the CJEU in C-80/20

CJEU was asked to clarify whether:

1. the right to deduct VAT may be exercised where no (valid) VAT invoice has been issued for purchases of goods.
2. an application for a refund may be made in respect of VAT which became chargeable prior to the 'refund period' but which was invoiced during the refund period. More specifically, whether it is possible to obtain a refund in 2015 of input VAT paid on purchases made in 2012, if the invoices initially issued by the seller in 2012 were found not to meet certain formal requirements by the RTA and were therefore cancelled (annulled) by the supplier and reissued in 2015.
3. in the event of the annulment, by the supplier, of the invoices initially issued for the purchase of goods and the issuing of new invoices by that supplier at a later date, the right of the buyer for a refund of the input VAT is to be linked to the date of the new invoices, in a situation where the annulment of the initial invoices and the issuing of the new invoices is not within the recipient's control but is exclusively at the supplier's discretion.
4. national legislation may make the refund of VAT conditional upon the chargeability of the VAT in a situation where a corrected invoice is issued during the application period?

## Answers of the CJEU

1. EU law precludes national regulations which link the refund period solely to the time when the VAT becomes chargeable in. It is also necessary to hold an invoice showing the amount charged in VAT, even if the invoice does not fulfil all the formalities specified in Article 226 of the EU VAT Directive (VD). The right to deduct VAT may only be exercised where a (valid) VAT invoice has been issued for purchases of goods. It is only when a document is so flawed that it does not provide the TA with the information to support a claim for a refund that it can be considered that such a document is not an "invoice" within the meaning of EU VD, as amended by Directive 2010/45. CJEU has in its previous case law stated that an invoice meets substantive requirements when it includes:

- information on the supplier,

- the recipient of the supply,
- the goods or services supplied,
- the price and
- the VAT amount payable.

All formal requirements for obligatory information on the VAT invoice do not have to be complied with fully for the VAT becoming deductible and a VAT invoice meeting all requirements may be provided at a later date (i.e. corrected retroactively).

2. and 4. EU VAT law precludes the rejection of the VAT refund in certain period (e.g. for 2015) merely because it became due in an earlier refund period (e.g. in 2012), while a VAT invoice was issued in this period (2015).

3. the unilateral cancellation of an invoice by a supplier - after the MS of refund has rejected the VAT refund, and the issuance by that supplier, in a subsequent refund period, of a new invoice for the same supplies, has no effect on the existence of the right to a VAT refund already exercised, nor on the period for which that right is to be exercised. This means that the (new) refund request is subject to limitation period. If the initial invoice met the substantive requirements, then the right for VAT reduction has arisen in earlier period when the initial (cancelled) invoice was issued. As the CJEU has always noted in its case-law on corrected invoices that the MS may deny their retroactive effect if the correction (or completion of the documents) was made 'after a refusal decision was adopted'. That also applies where an invoice is not only corrected, but is cancelled in its entirety and reissued after the refusal decision was adopted. Instead of cancelling an invoice and filing a new request on basis of a new invoice, the company should have submitted an appeal of the denial of the refund (within time limits under national law).

## Consequences for practice

**The right of VAT deduction/refund is in the period when a valid VAT invoice is issued even if this invoice relates to an earlier refund period.**

In the Netherlands, the policy of the TA is already largely in line with this decision. For example, if a UK trader receives an invoice without Dutch VAT in 2019 and in 2021, an additional invoice including Dutch VAT which the supplier by mistake did not initially charge, then the right for a VAT refund raises in 2021 not in 2019 because the correct VAT invoice with the Dutch VAT was only issued in 2021.

In the Netherlands, it is possible to submit a claim over the last 5 years (without right of appeal if the earlier deadlines

provided by the EU Directives are not met) and this right to receive a refund in a later period is less important than in other Member States (MSs) where only minimum periods provided by the EU Directives apply.

**CJEU decisions should make VAT refunds easier in the MSs where the refund is only possible until the strict deadline contained in the EU VAT Directives .**

For example 8<sup>th</sup> Directive contains a minimal time limit of **nine months** for EU businesses and **six** months for a non-EU businesses. If your VAT refund request was refused because the invoice did not meet certain minimal “substantive requirements” or if it was not possible because your supplier did not issue a (valid) invoice on time, then you have a right to request the VAT refund in a later period when you are in possession of a correct VAT invoice although this VAT became chargeable in earlier VAT refund period.

This would potentially diminish possible discrimination between registered and non-VAT-registered businesses, in so far as resident companies have, under national legislation of MSs, a limitation period of 5 to 6 years within which to apply for a refund of VAT, whereas non-resident EU businesses have a period of only **nine months** and

non-EU businesses only a period of **six** months for exercising that right.

**Refusal decisions of the TA could not be overturned by the subsequent cancellation and reissuing of the invoices.**

If an invoice meeting “substantive requirements” for VAT deduction is cancelled and a new invoice is issued, then the business cannot file a (new) refund request after a refusal of refund by the tax authorities (TA) for the cancelled invoice. The business should appeal the decision (within time limits) or use opportunities to make corrections in the initial request according to the rules provided by the national law instead.

It is important to follow the procedural requirements for appeals and stay in legal limitation periods, when submitting refund requests.

**Grant Thornton's international indirect tax team and digital advisory team can assist you in your VAT refund claims as well as in any other VAT / customs matters, compliance and update of your systems and processes. Please contact us if you would like to discuss your options and possibilities.**

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## Contact

Do you have questions or do you need more detailed information? Please do not hesitate to contact us.

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