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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1050

CASE LAW

ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

ORIGIN:	**Croatia**
REFERENCES:	**Articles 66(b) and 167**
SUBJECT:	**Implications of the CJEU's judgment in Case C-9/20 *Grundstücksgemeinschaft Kollaustraße 136***

1. INTRODUCTION

The Croatian authorities want to discuss the implications of the ruling of the Court of Justice of the European Union (CJEU) in case C-9/20 *Grundstücksgemeinschaft Kollaustraße 136*[1]. In particular, their question is whether the postponement of the right to deduct VAT until the moment of the payment of the supply, when the supplier applies the "cash-accounting" scheme laid down in Article 66(b) of the VAT Directive[2], could be seen as contrary to the principle of neutrality and have negative effects from a market competition point of view.

The text of the question is annexed to this document.

2. THE CIRCUMSTANCES OF CASE C-9/20, *KOLLAUSTRAßE*

Kollaustraße is a company which entered into a leasing agreement of a plot of land. Kollaustraße, the lessee, and its lessor, waived the tax exemption for such rental and instead opted for their liability to VAT.

From 2004, Kollaustraße's rental payments were partly deferred. As a result, part of its rent for the years 2009 to 2012 was paid during the financial years 2013 to 2016. Kollaustraße was also released from the debt by the lessor in 2016.

Kollaustraße and its lessor were authorised by the tax office to calculate VAT on the basis of the remuneration received, by way of the "cash-accounting" scheme, and not on the basis of the remuneration agreed. Kollaustraße included its input tax deduction claim in the VAT return covering the period in which the payment was made, irrespective of the rental period for which the payments were intended preceding that period.

During an audit, the tax office was of the opinion that the input tax deduction claim had already arisen with the performance of the transaction (the monthly rental of the property) and should therefore have been asserted for the corresponding financial years. Consequently, tax notices were issued for the financial years 2011 to 2015 and a provisional tax assessment for the 2016 financial year. Further, the tax notices for previous financial years were not amended, as the assessment of the tax was time-barred. As a result, the VAT which had been included in the rent paid in 2013 and 2014, corresponding to the 2009 and 2010 rental periods, could not be deducted by Kollaustraße as input tax, since the tax office took the view that the right of deduction should have been relied on in the 2009 and 2010 financial years. It should be noted that Germany has not made use of the option given to Member States in Article 167a of the VAT Directive for postponement of the right to deduct VAT.

Kollaustraße brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), before which it claimed an infringement of the VAT Directive, arguing that if the supplier of goods or services calculates his or her tax on the basis of the remuneration received, the recipient of the supply's right of deduction only arises at the

[1] CJEU, judgment of 10 February 2020, *Grundstücksgemeinschaft Kollaustraße 136*, C-9/20, EU:C:2022:88 (hereinafter *Kollaustraße*).

[2] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

time when the remuneration is paid. Given that, under German legislation, the right of deduction arises when the goods or services are supplied, regardless of when the tax becomes chargeable for the supplier and regardless of whether the tax is calculated by the supplier on the basis of the remuneration agreed or on the basis of the remuneration received, the Finanzgericht Hamburg had doubts as to the compatibility of German law with EU law in the light of Article 167 of the VAT Directive, under which the right of deduction arises only at the time when the deductible tax becomes chargeable.

3. THE QUESTIONS REFERRED TO THE COURT OF JUSTICE IN CASE C-9/20, *KOLLAUSTRAßE*

The questions referred to the CJEU essentially relate to the impact of the postponement of the chargeability of VAT, in accordance with Article 66(b) of the VAT Directive, for the supplies of goods or services made by certain taxable persons, on the right to deduct VAT of their customers, in the light of Article 167. In particular, if VAT can only be deducted when the VAT is paid and, therefore, becomes chargeable at that moment in time, or whether a Member State can provide that the deduction of that VAT should take place at the moment the chargeable event takes place.

In this regard, the questions submitted by the Finanzgericht Hamburg (Finance Court, Hamburg) to the CJEU for a preliminary ruling were the following:

(1) Does Article 167 of [the VAT Directive] preclude a provision of national law according to which the right of input tax deduction already arises at the time the transaction is performed, even if, under national law, the tax claim against the supplier or service provider arises only when the remuneration is received and the remuneration has not yet been paid?

(2) If the first question is answered in the negative: does Article 167 of [the VAT Directive] preclude a provision of national law according to which the right of input tax deduction cannot be asserted for the tax period in which the remuneration has been paid if the tax claim against the supplier or service provider arises only when the remuneration is received, the service has already been provided in an earlier tax period and, under national law, due to the matter being time-barred, it is no longer possible to assert the input tax claim for that earlier tax period?

4. THE COURT OF JUSTICE'S JUDGMENT IN CASE C-9/20, *KOLLAUSTRAßE*

The CJEU ruled that *Article 167 of [the VAT Directive] must be interpreted as precluding national legislation which provides that the right of input tax deduction arises at the time the transaction takes place if, pursuant to a national derogation under point (b) of the first paragraph of Article 66 of [the VAT Directive] the tax becomes chargeable to the supplier of goods or services only when the remuneration is received and has not yet been paid*.

5. THE COMMISSION SERVICES' ANALYSIS

The ruling of the CJEU deals with the interaction between Articles 66(b) and 167 of the VAT Directive. The question at stake is whether the fact that the VAT on the supplies of goods and services made by a taxable person is chargeable according to the "cash

accounting" scheme affects the moment of exercising the right to deduct VAT by his or her customer.

5.1. Cash accounting and implications of use of this scheme

The "cash accounting" scheme is an option given to Member States in Article 66(b) of the VAT Directive according to which, in respect of certain transactions or certain categories of taxable persons, VAT becomes chargeable no later than the time the payment is received.

The general rule laying down the moment when the right to deduct VAT arises is Article 167 of the VAT Directive. According to this Article, it is the moment of the chargeability of the deductible VAT which triggers the right to deduct and not the moment the chargeable event occurs. As the CJEU states in its reasoning[3], which replicates the statement of the Advocate General in point 49 of his Opinion, the wording of Article 167 of the VAT Directive is "clear and unambiguous", thus leaving no room for interpretation.

It is true that usually the chargeable event and the chargeability of the tax occur at the same moment, that is when the goods or services are supplied, in accordance with Article 63 of the VAT Directive.

However, the VAT Directive provides for certain exceptions to this rule, which separate the chargeable event from the chargeability. One of them is in Article 66(b) of the VAT Directive (the 'cash accounting' scheme – where the tax becomes chargeable no later than when payment is received). Here, if a Member State makes use of this scheme, the consequence, as stressed by the CJEU[4], is that for transactions where the tax becomes chargeable no later than the moment the payment is received, the right of deduction also arises at the point in time when such payment is received.

Therefore, if a person applies the cash accounting scheme, the chargeability of the VAT on his or her supplies of goods or services is linked to the moment where the payment is received. As a result, the right to deduct for his or her customers only arises when that VAT is paid, even if the customers are not applying the cash accounting scheme themselves.

Any option allowing Member States to derogate from the general rule in Article 167 of the VAT Directive would be acceptable only if had been expressly set out in the Directive itself. For example, Article 167a of the VAT Directive provides an option for Member States to postpone, for taxable persons under the "cash accounting" scheme, the deduction of the VAT on the goods or services supplied to them until the VAT has been paid to their suppliers.

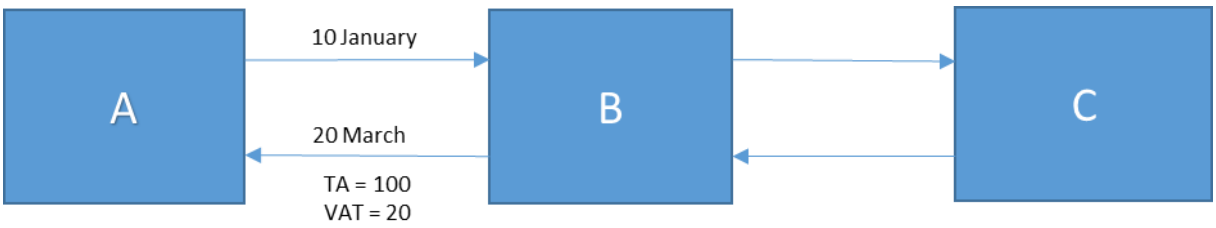
Article 167a of the VAT Directive allows Member States to disconnect the moment when the VAT can be deducted from the chargeability of the tax. The VAT on the goods and services supplied to a taxable person under the "cash accounting" scheme becomes chargeable when those goods and services are supplied (unless a special rule applies). However, when a Member State has made use of the provision in the said Article 167a,

3 *Kollaustraße*, paragraph 40.

4 *Kollaustraße*, Opinion of Advocate General Tanchev delivered on 9 September 2021 EU:C:2021:730, paragraph 49.

the taxable person under the "cash accounting" scheme can only deduct the VAT charged by its suppliers when he or she pays the VAT on those supplies.

We consider a chain transaction corresponding to a supply of goods between three taxable persons (A, B and C), where B is a taxable person under the "cash accounting" scheme:

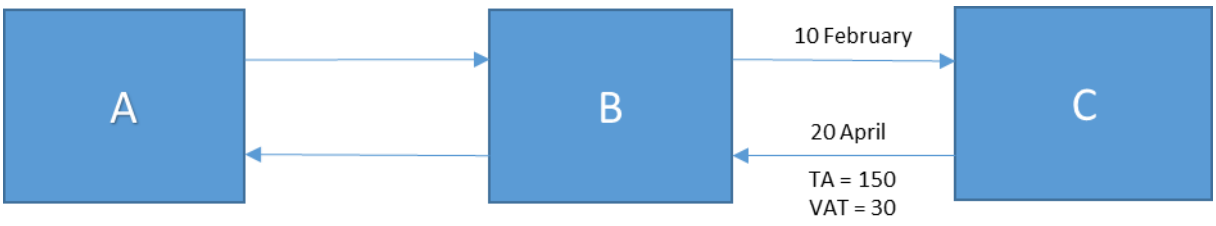


We first focus on the transaction between A and B. The goods are supplied by A on 10 January. B makes the payment on 20 March. As A is not under the cash accounting scheme, both the chargeable event and the chargeability occur according to Article 63 of the VAT Directive, on the date the goods are supplied (10 January) and that will be the case irrespective of whether the Member State has made use of the option in Article 167a or not. A will pay the VAT due (EUR 20) in the VAT return corresponding to the tax period of January.

However, the moment where B can deduct VAT will depend on whether the Member State has made use of the option in Article 167a of the VAT Directive. If the Member State has not made use of that option, then B will be able to deduct that VAT in the VAT return corresponding to the tax period of January, the one where VAT became chargeable (10 January). If the Member State has made use of the option in Article 167a, then the right to deduct of B is postponed until the moment when B pays the VAT (20 March). Therefore, it can only be deducted in the return corresponding to the tax period of March.

However, the VAT Directive does not provide for a similar rule, allowing Member States to disconnect the deductibility of the tax from the chargeability, in respect of supplies of goods and services received by the customer of a taxable person who applies the "cash accounting" scheme. Therefore, in these cases the deduction of the VAT is linked to the chargeability. The fact that the Member State concerned has used or not the option in Article 167a of the VAT Directive is irrelevant in this regard, as this option only impacts the supplies of goods and services made to the taxable person under the "cash accounting" scheme, and not those made by him or her.

Coming back to our example, we focus now on the transaction between B and C.



The goods are supplied by B on 10 February. C pays the supply on 20 April. The chargeable event takes place, according to Article 63 of the VAT Directive, on the date the goods are supplied (10 February). However, in this case the chargeability takes place, in accordance with Article 66(b) of the VAT Directive, on 20 April. That is the moment determining the liability of the tax by B and the right of deduct by C.

Therefore, B will have to include that VAT in the VAT return corresponding to the tax period of April. C will only be able to deduct the VAT in the VAT return corresponding to the tax period of April and not in the one corresponding to the tax period of February. That will happen irrespective of whether the Member State has made use of the option in Article 167a of the VAT Directive or not.

We thus conclude that when a taxable person acquires goods and services from another taxable person whose supplies are under the "cash accounting" scheme, the first taxable person cannot deduct VAT until the payment of that VAT to the supplier is made. The VAT Directive does not give Member States the option to derogate from this rule.

5.2. Impact on the principle of neutrality

The Croatian authorities in their question stressed the negative effects of the application of this rule on the principle of neutrality. In particular, they state that "*the taxable persons applying the regular taxable procedure have no possibility to deduct input tax before paying the invoice of the supplier applying the taxation procedure on the basis of remuneration received, while they are entitled to deduct input tax on the basis of other outstanding invoices received from suppliers applying the regular taxable procedure. On the other hand, the tax liability arises for such taxable persons for all of the supplies made, irrespective of whether they were charged or not*".

In addition, they provide different statements of rulings of the CJEU referring to the principle of neutrality. They are the following:

1) *The right of taxable persons to deduct from the VAT which they are liable to pay the VAT due or paid on goods purchased and services received by them as inputs is a fundamental principle of the common system of VAT established by EU legislation.*

2) *The right of deduction provided for in Article 168(a) of [the VAT Directive] is an integral part of the VAT scheme and in principle may not be limited. The right is exercisable immediately in respect of all the taxes charged on transactions relating to inputs.*

3) *The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT thus ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT.*

4) *As regards the material conditions to be met for a right to deduct to arise, the Court has held that it is apparent from Article 168(a) of the VAT Directive that the goods and services relied on to give entitlement to that right must be used by the taxable person for the purposes of his own taxed transactions, and that, as inputs, those goods or services must be supplied by another taxable person.*

5) *Since Article 168 of the VAT Directive does not impose any other condition relating to the use by the person to whom the goods and services at issue are supplied, it must be concluded that, provided the two conditions mentioned in the preceding paragraph are satisfied, a taxable person is, in principle, entitled to deduct input tax.*

The Commission services do not think that the combined effect of Articles 66(b) and 167 of the VAT Directive has any implications on the principle of neutrality.

The fact that the right to deduct VAT is delayed until the moment that VAT is paid may have a financial impact on the taxable person. However:

1) the possibility for the taxable person to exercise his or her right to deduct is not as such affected,

2) such a right to deduct is not limited by any means,

3) the taxable person is entirely relieved of the burden of the VAT paid,

4) the material conditions for the right to deduct to arise are not altered by these rules, and

5) the entitlement of the taxable person to deduct the input tax is never put into question.

The neutrality of the tax means that a taxable person should not bear the burden of VAT, which is a tax on the final consumption. For that purpose, the taxable person has the right to deduct the VAT paid on the supplies of goods and services used for the purposes of taxed transactions (input in the form of intermediate consumption). These conditions are not put into question by the postponement of the right to deduct until the moment the VAT is paid.

Such postponement might have an effect on the cash-flow of the taxable person receiving the goods or services, who will only be able to deduct the VAT once he or she has made the payment, instead of deducting the input VAT immediately from the moment the goods or services are supplied. However, this possible cash-flow effect does not have any implications on the principle of fiscal neutrality.

Further, the CJEU made clear in *Finanzamt Steglitz*[5] that the principle of fiscal neutrality is not a rule of primary law. Therefore, it can be used to interpret the rules, but it cannot lead to change them or to overcome them. If the provision says that the deduction cannot be done until the VAT is paid, then there is no possibility to invoke the principle of neutrality to achieve a different result

5.3. Impact on market competition

The Croatian authorities also point to the negative effects that the combined application of Articles 66(b) and 167 of the VAT Directive could entail for taxable persons applying the "cash accounting" scheme.

5 CJEU, judgment of 15 November 2012, *Finanzamt Steglitz*, C-174/11EU:C:2012:716.

In this regard, the Croatian authorities point out that the postponement of the right to deduct creates administrative burdens for the customers of the taxable persons under the "cash accounting" scheme. Those customers need to differentiate between the invoices received from the latter and the invoices received from other taxable persons and apply a different rule to them regarding the right to deduct. This administrative burden could discourage customers from acquiring goods and services from taxable persons under the "cash accounting" scheme.

The application of the "cash accounting" scheme indeed obliges any customers to make such a differentiation. For that reason, Article 226(7a) of the VAT Directive requires the inclusion of the mention "cash accounting" on the invoices of those applying the scheme[6]. As this could represent a difficulty for the customers, this might have an impact on their decision to contract or not with one or the other taxable person.

However, apart from this possible shortcoming, the scheme provides advantages to any taxable persons using it. They do not have to prefinance the VAT on their supplies of goods and services, which could represent a significant financial cost for these taxable persons. This is the case in particular if they have to grant to their customers long payment deadlines.

It is a similar case to that of SMEs under the special scheme for small enterprises. They are granted simplifications to comply with their VAT obligations, in particular a VAT exemption, but on the other hand their customers cannot deduct the hidden VAT on the supplies received from those taxable persons, which can be a disincentive as it leads to hidden VAT that cannot be recovered.

In any case, as the "cash accounting" is an optional scheme, it will be for the taxable person to take into account the advantages and disadvantages the scheme entails before opting for it.

Finally, it should be noted that if customers would be allowed to deduct VAT immediately, while the suppliers only have to pay that VAT to the tax administration once they have received the payment, this could facilitate VAT fraud.

5.4. Conclusion

Article 167 of the VAT Directive links the moment when the right to deduct VAT arises with the moment when that VAT becomes chargeable. It is not possible to derogate from this rule unless the VAT Directive provides for this possibility.

As a result, the VAT charged on supplies of goods and services made by taxable persons applying the "cash accounting" scheme to be found in Article 66(b) of the VAT Directive can only be deducted by their customers when that VAT is received from them as part of the payment for the supplies made. Member States cannot in this instance provide for a different rule for the deduction of VAT.

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6 In this regard, the Commission services, after careful consideration, have come to the conclusion that this mention is needed both for the invoices issued by suppliers who apply the cash accounting scheme in a Member State that has made use of the option in Article 167a of the VAT Directive, and by suppliers who apply the cash accounting scheme in a Member State that has not made use of such option.

6. DELEGATIONS' OPINION

Delegations are asked to express their opinion on the Commission services' analysis.

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ANNEX

Question from Croatia

Subject: Request for analysis of the CJEU Judgement in Case C-9/20 Grundstücksgemeinschaft

We kindly request you to enlist into the meeting agenda of the VAT Committee the analysis of the Judgement of the Court of Justice of the European Union (hereinafter: the CJEU) of 10 February 2022 in Case C-9/20 Grundstücksgemeinschaft Kollaustraße 136, including its application within the scope of tax authorities' procedures.

Namely, we would like to get a clarification of the CJEU Judgement of 10 February 2022 and the Opinion of Advocate General of 9 September 2021 in Case C-9/20 Grundstücksgemeinschaft Kollaustraße 136, in view of its proper application within the Tax Administration procedures in the Republic of Croatia (hereinafter: Croatia) and the interpretation of the existing provisions of the Croatian Value Added Tax Act 73/13, 148/13, 143/14, 115/16, 106/18, 121/19, 138/20, 39/22; Constitutional Court decision no. 99/13, 153/13), in relation to the determination of the point in time at which the right of deduction of input tax arises.

In the above-mentioned judgement, the CJEU decided:

"*Article 167 of Council Directive 2006/112/EC ... must be interpreted as precluding national legislation which provides that the right of input tax deduction arises at the time the transaction takes place if, pursuant to a national derogation under point (b) of the first paragraph of Article 66 of Directive 2006/112 ... the tax becomes chargeable to the supplier of goods or services only when the remuneration is received and has not yet been paid.*"

It follows from the wording of the judgement and the opinion of advocate general in Case C-9/20 that the right of input tax deduction arises to the buyer at the time at which the obligation to pay VAT arises to the supplier, regardless of the buyers' status within the scope of the tax procedure they apply (regular taxation procedure – calculation on the basis of supplies made or taxation procedure on the basis of remuneration received) and that the CJEU judgement is not limited to this particular case.

The provision of Article 167 of the Directive 2006/112/EC (hereinafter: the VAT Directive) should, according to the German position, be interpreted in relation to the provision of Article 63 of the Directive. However, according to the interpretation of the CJEU and the advocate general in Case C-9/20, the said provision should be interpreted as regards all the provisions referring to the time the tax liability arises (Article 63 to 66 of the VAT Directive), which is explained in item 49 of the Opinion of advocate general and reads as follows: *"...Article 167 of the VAT Directive links the time of deduction (of input VAT, for the recipient of goods or services) to the time the corresponding VAT becomes chargeable (to the supplier)...Article 167 of the VAT Directive thus expresses a general rule and a general principle, pursuant to which the recipient's deduction of input VAT is matched on a transaction basis to the time when the output VAT becomes chargeable to the supplier. In that respect, Article 167 does not give any preference to the principle set out in Article 63 of the VAT Directive over the modifications, exceptions or derogations set out in Articles 64 to 66 of that directive.* Furthermore, the advocate general in points 57 and 58 of her opinion states: *"...Article 167 requires consistent treatment of the*

transaction in question by the supplier and the recipient.", while "... Article 167a thus requires consistent treatment of the taxable person in question.". In point 57, the advocate general continues to emphasize: *"Article 167 of the VAT Directive links the timing of the right of deduction for the recipient of goods or services to the timing of the VAT becoming chargeable for the supplier of those goods or services. When that provision operates in conjunction with Article 66(b) of that directive, that is to say, where the supplier is using cash accounting, the recipient's right of deduction for input VAT arises when the supplier receives payment (coincidentally with the time the recipient of the goods or services in question pays). The generally applied method of accounting for output VAT by the recipient – cash or accrual – is without incident to this. …"*

In the Case C-9/20, the advocate general and the CJEU refer to the content of the provision of Article 167 of the VAT Directive on the arising of the right to deduct input tax, and they explain that, as to the interpretation of the provision, there is no reason to exclude the relation to the provisions of Articles 64 to 66 of the Directive on the moment when the tax liability arises, while the provision of Article 167a regulates the right to deduct input tax solely as regards specific taxable person applying the taxation procedure on the basis of remuneration received.

- The analysis of the Croatian Tax Administration prior to the judgement of CJEU in Case C-9/20

According to settled case-law, the CJEU interprets the principle of VAT neutrality arising from the VAT Directive in the sense that VAT neutrality is viewed in relation to taxable economic activity of a taxable person, and not in relation to the state budget.

Namely, as stated in the judgements of the Court of Justice of the EU in cases: C-124/12 AES-3C Maritza East 1 EOOD (points: 25. and 26.), C-267/15 Gemeente Woerden (points: 30., 31., 32., 34. and 35.) and C-183/14 Salomie and Oltean (points: 55. to 59.):

- *The right of taxable persons to deduct from the VAT which they are liable to pay the VAT due or paid on goods purchased and services received by them as inputs is a fundamental principle of the common system of VAT established by EU legislation.*

- *The right of deduction provided for in Article 168(a) of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. The right is exercisable immediately in respect of all the taxes charged on transactions relating to inputs.*

- *The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT thus ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT.*

- *As regards the material conditions to be met for a right to deduct to arise, the Court has held that it is apparent from Article 168(a) of the VAT Directive that the goods and services relied on to give entitlement to that right must be used by the taxable person for the purposes of his own taxed transactions, and that, as inputs, those goods or services must be supplied by another taxable person.*

- *Since Article 168 of the VAT Directive does not impose any other condition relating to the use by the person to whom the goods and services at issue are supplied, it must be concluded that, provided the two conditions mentioned in the preceding paragraph are satisfied, a taxable person is, in principle, entitled to deduct input tax.*

Accordingly, the right to deduct input tax is a fundamental right of a taxable person underpinning the VAT taxation system. In accordance with the *acquis communautaire*, which is implemented in the Croatian regulations, and the case-law of the CJEU, the said right cannot be limited by imposing additional conditions for the taxable persons to meet in order to exercise their right to deduct input tax because such practice would distort the principles of VAT neutrality as regards all of their economic activities.

The derogation provided for by the provision of Article 167a of the VAT Directive, according to which Member States may provide for as an option that the right of deduction is to be postponed until the taxable persons pay the supplier the VAT on the goods or services supplied, refers to the taxable persons applying the taxation procedure on the basis of remuneration received. In addition, the provision on the arising of the tax liability according to Article 66, item (b) of the Directive is a derogation of the general rule on the arising of the tax liability and cannot exceed this derogation in a way that its effect generates an additional condition which the taxable person - supply recipient applying the regular taxation procedure - has to meet in order to use the right to deduct input tax. Such practice would distort the principles of VAT neutrality as regards all of the taxable person's economic activities. To this effect, there is no prescribed condition that the invoice must be paid when it comes to the deduction of input tax to the taxable person applying the regular taxation procedure for supplies received from another taxable person applying the taxation procedure on the basis of remuneration received.

- Conclusion

On the basis of the CJEU Judgement in Case C-9/20, we conclude that the provision on the arising of the right to deduct input tax (Article 167 of the VAT Directive) should be interpreted as meaning that the taxable persons, regardless of the taxation procedure they apply (regular taxation procedure or taxation procedure on the basis of remuneration received), acquire the right to deduct input tax charged by the taxable person applying the taxation procedure on the basis of remuneration received, only at the time when the supplier's invoice is paid, and that such interpretation is applicable under all circumstances.

Although the court in point 49 of the said judgement draws the opposite conclusion, we find that the said interpretation has a negative effect on the taxable person's business operations in relation to the following two segments:

1. VAT neutrality as regards the overall economic activity of a taxable person which is liable to VAT

- Namely, the taxable persons applying the regular taxable procedure have no possibility to deduct input tax before paying the invoice of the supplier applying the taxation procedure on the basis of remuneration received, while they are entitled to deduct input tax on the basis of other outstanding invoices received from suppliers applying the regular taxable procedure. On the other hand, the tax

liability arises for such taxable persons for all of the supplies made, irrespective of whether they were charged or not.

2. market competition

- There is a possibility that the taxable person applying the regular taxation procedure starts choosing those suppliers which do not apply the taxation procedure on the basis of remuneration received, due to tax reasons. In this sense, the suppliers applying the taxation procedure on the basis of remuneration received are not in the same position as the suppliers applying the regular taxation procedure, which could lead to a discriminatory effect of the VAT taxation, which should be neutral in this sense because both suppliers are liable to VAT. Namely, unlike the taxable persons which opted for taxation procedure on the basis of remuneration received and which are aware of the fact that they cannot deduct the unpaid input tax, the taxable persons applying the regular taxation procedure are in the situation where they can and will choose the suppliers for whose supplies there is no need to wait for the deduction of input tax before paying the invoice.

In view of the above mentioned, we kindly ask the VAT Committee to undertake the analysis of the said CJEU judgement in the Case C-9/20 within the meaning of its proper interpretation and application within the tax authorities' procedures.