

Tax Flash

VAT relief on bad debts – ECJ Decision in favour of taxpayers

December 2017

On November 23, 2017 the ECJ issued its judgement in case C-246/16 (Enzo Di Maura), confirming that Member States are not allowed to take disproportionate measures that effectively preclude the taxpayer's right on VAT bad debt relief.

EU and Greek VAT legislation

- The EU VAT Directive provisions (article 90 par.1 and par. 2 of the VAT Directive 2006/112/EC) stipulate that in the case of cancellation or refusal of a supply or total or partial non-payment of the price, 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 that a derogation from said provision is allowed in cases of total or partial non-payment of the transaction price.
- The above derogation has been applied by Greece, which, in cases of total or partial non-payment of the price, effectively only allows the reduction of the taxable amount and the VAT payable on the condition that the debt is definitively irrecoverable due to the debtors having been subject to a special insolvency regime.
- The currently applicable Greek VAT legislation does not provide for the possibility of taxable persons to recover VAT from bad debt, rendering the relevant VAT amounts paid to the State, without being collected by customers, a cost for their businesses.

Impact of the ECJ Decision

- However, the recent ECJ Decision C-246/16 (Enzo Di Maura) confirms that Member States are not allowed to take disproportionate measures that effectively preclude the taxpayer's right on VAT bad debt relief.
- Whilst acknowledging Member States' rights to take into account the uncertainties surrounding non-payment of a debt, the ECJ considers that such rights do not permit a disproportionate restriction of the possibility of correcting the taxable amount and claiming VAT bad debt relief.
- In specific, the ECJ concludes that a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment of the price subject to the conclusion of insolvency proceedings, especially in cases where these proceedings may have a long duration (a likely duration of more than 10 years is considered by the ECJ to be too long a delay for the recovery by a supplier of VAT not collected from the customer); the rationale of the judgement is built on fundamental principles of the Treaty of the Functioning of the EU (TFEU) and of the VAT Directive, namely the principles of proportionality, fiscal harmonization and neutrality of the VAT.

Main remarks

The above ECJ Decision strengthens the available legal argumentation aiming at challenging the currently applicable Greek VAT provisions as contrary to the notion and purpose of the relevant Community provisions and enhances the chances of taxpayers having suffered from bad debts to successfully pursue Greek VAT relief by instituting legal proceedings.

It is important to note that each individual case needs to be examined based on its specific circumstances, and that the above mentioned general principles might not necessarily capture all possible eventualities. In addition, for the successful recovery of Greek VAT not collected from customers it is important to tackle the intricacies of the Greek procedural framework. Our tax expert advisors are in a position to advise you on the tax implications arising from a Greek VAT perspective in relation to your specific case, whilst our tax litigation team may assist you throughout all instances with a view to reclaiming the Greek VAT not collected.

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This information is intended only as a general update for interested persons and should not be used as a basis for decision making. For further details please contact PwC:

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