

TaxAlert

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European Commission asks for the refund of unpaid VAT

On October 8th 2009, the European Commission has asked the Hungarian government to modify the VAT law. If the government and the Parliament accept the opinion of the Commission, the rules on VAT refunds may become more favorable for Hungarian taxpayers.

The Commission found a Hungarian rule to be contrary to EU regulations. Based on the Hungarian law, if the deductible VAT on the purchases of a taxpayer exceeds the VAT payable for its sales (i.e. if the enterprise asks for a refund of VAT) then VAT cannot be reclaimed for unpaid invoices. These amounts can only be carried forward for the subsequent tax return as a deductible item.

There are two typical categories of business that often face this limitation: those performing significant investments (in which case purchases often exceed revenues for a few months), and those making sales or providing services to partners abroad (who can often issue their invoices to abroad without VAT, while their local Hungarian costs are subject to VAT). For these businesses, it is a common problem – especially in periods of economic difficulties – that as long as even part of an invoice for their costs is unpaid, they can not reclaim any VAT for that invoice, either.

There are no explicit EU rules against the Hungarian restriction. Nevertheless, the Commission argues that it is against the principles of VAT and the requirement of fiscal neutrality that taxpayers may not exercise their right of deduction immediately, while they have to fulfill VAT payment obligations without delay.

The current letter of the Commission is the second step in the infringement proceeding against Hungary: following investigations and a letter of formal notice, now it has issued its reasoned opinion to the Hungarian government. If Hungary fails to amend its VAT law accordingly (or fails to convince the Commission that the Hungarian VAT law is in line with EU rules) then the Commission may refer the case to the European Court of Justice against Hungary. If the ECJ rules for the Commission, Hungary will be required to change its legislation accordingly.

This procedure may last up to several years. The outcome can be vital to many, as a successful case by the Commission against Hungary would mean significant cashflow benefits to the businesses concerned.

We will keep you updated on the procedure.

If you have any questions regarding this procedure, please call Balázs Földes (887-7232, balazs.foldes@kpmg.hu) or your regular advisor at the Tax Department of KPMG.

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