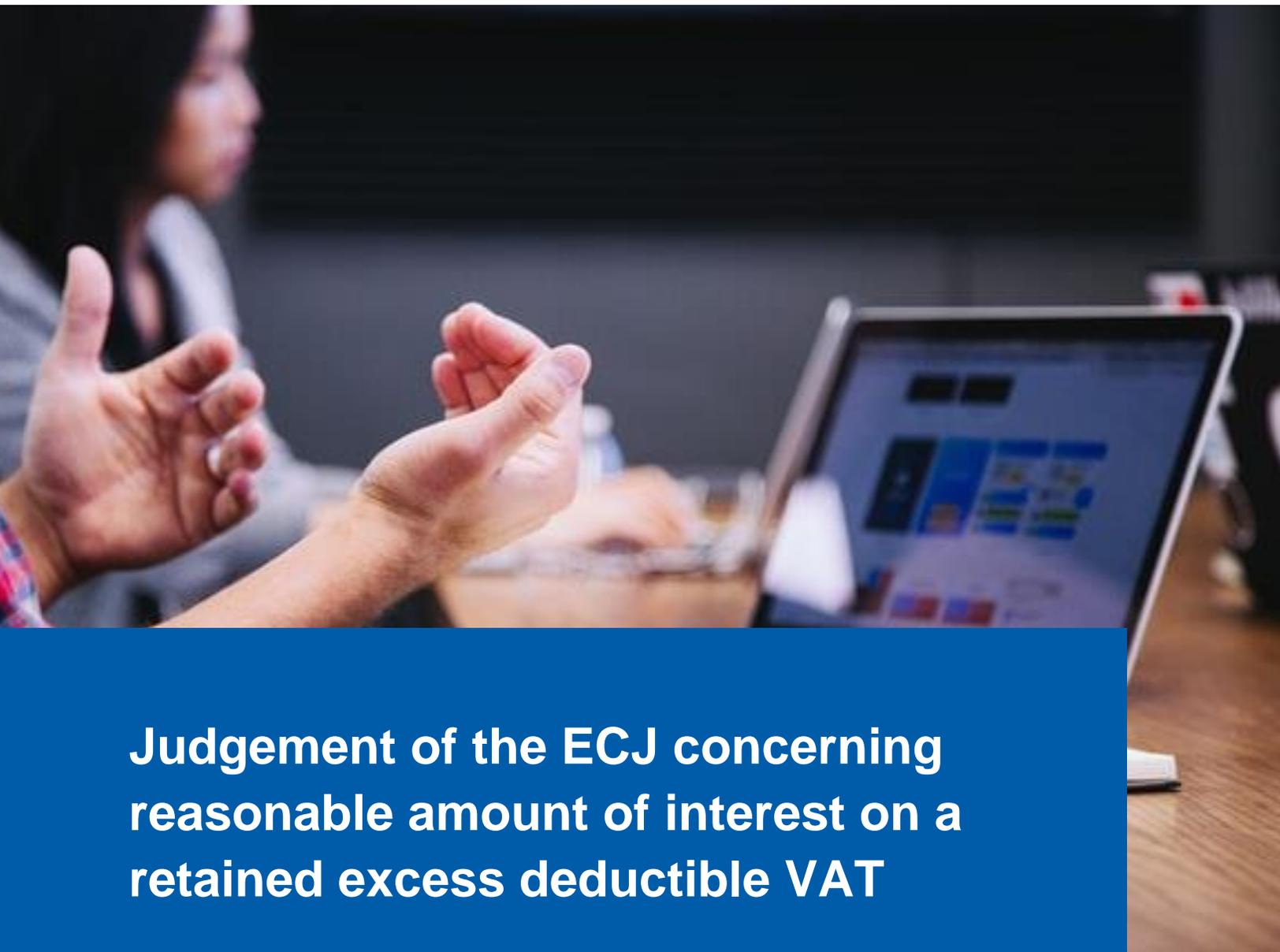


News Flash

October 27, 2020



Judgement of the ECJ concerning reasonable amount of interest on a retained excess deductible VAT

Reasonable amount of interest on a retained excess deductible VAT

In this edition of our News Flash, we would like to briefly outline a case of the European Court of Justice (ECJ), which was published in common cases C-13/18 (Sole-Mizo Zrt.) and C 126/18 (Dalmandi Mezőgazdasági Zrt.), which dealt with the reasonable amount of interest, that has to be returned by Hungarian Tax authority, on a retained excess deductible VAT.

ECJ dealt with issues of substantive and procedural conditions under which **a taxable person should be returned by the excess VAT deduction that could not be returned in a reasonable term because of a condition given by Hungarian legislation, which was consequently declared contrary to EU law.**

Circumstances of the case

Referring to a resolution as of 17 July 2014 of Delphi Hungary, in which the ECJ stated that Union law precluded legislation of the Member States which exclude the payment of interest on an excess deductible VAT which could not be returned because of the existence of a national provision which was later declared to be incompatible with EU law, Sole Mizo submitted a request for the payment of interest on retained excess deductible VAT to the Tax authority.

In this regards, company Sole Mizo requested the following:

- **Payment of interest on retained excess deductible VAT for the period from the submission of VAT return in which the excess deductible VAT was declared and which was to be carried over to the following tax period under the legislation in force at that time, namely „settled compensation“ condition, until the deadline for the**

submission of VAT return for the following tax period;

- **Interest on late payment of the interest on retained excess deductible VAT for the period of late payment of that interest.**

The Tax authority partially granted the request, granting the company interest on the retained excess deductible VAT, which was calculated using an interest rate equal to the simple basic interest rate of the Hungarian Central Bank. The Tax authority rejected the request in its second part, concerning the payment of late payment interest calculated at a rate equal to double basic rate of the Hungarian Central Bank due to the delay in paying that interest. The company argued that interest on the retained excess deductible VAT should also be calculated by applying a rate equal to double basic rate of the Hungarian Central Bank.

Company Dalmandi also applied for the payment of interest on the retained excess deductible VAT and also requested that double basic rate of the Hungarian Central Bank should be used in the calculations.

Questions referred to ECJ

These cases gradually came to a Hungarian court, which further referred several questions to the ECJ concerning the adequacy of the amount of interest, the conditionality of interest by filing the request and the limitation period.

The question was also whether the period during which the tax administrator was not required to reimburse the excess deductible VAT under national legislation should be taken into account when calculating the amount of interest on the retained excess deductible VAT, as the ECJ stated later on that the provision was contrary to EU legislation.

ECJ decision

The amount of interest rate

The ECJ decided in these cases that **EU law and the principles of efficiency and tax neutrality in particular, precluded a Member State's practice regarding calculation of interest** on the excess deductible VAT retained beyond a reasonable period of time in breach of EU law **by applying an interest rate equal to the basic rate of national central bank, if this rate is lower than the rate that a taxable person who is not a credit institution would have to pay for borrowing an amount equal to the amount in question.**

The period

According to the ECJ, the interest on the excess deductible VAT in question is to be calculated in such a way as to compensate decrease in value due to the passage of time **from the period in which the excess VAT deduction was**

declared until the actual payment of that interest, to the taxable person.

The limitation period

The ECJ further stated that Union law and the principles of effectiveness and equivalence in particular, **do not preclude a Member State's practice of setting a limitation period** for submitting a request for a payment of interest on excess deductible VAT retained because of the application of a national provision found to be contrary to Union law.

The request condition

In case of late payment interest due on non-payment by the Tax authority within the statutory deadline for payment of interest on excess deductible VAT retained in breach of EU law, the ECJ decided that **EU law did not preclude a Member State's practice of making default late payment interest conditional on a specific request,** while in other cases such interest was granted ex offa. The ECJ has also decided that it is appropriate to apply this interest rather from the expiration of the deadline set for the Tax authority to process such a request, than from the date on which the excess VAT deduction arose.

Applicable implications of the ECJ case

In regards with the ECJ's findings on the need to adequately compensate the financial loss from the retained excess deductible VAT at the level of interest, the position of taxable persons in disputes with the financial administration in case of non-grant a reasonable interest may be strengthened.

In accordance with the Slovak VAT Act, in case the Tax authority has opened a tax audit and the excess VAT deduction has not been refunded within the 6-month period, the taxpayer is entitled to be granted with interest on the retained excess deductible VAT after the 6 months in question until the date of its refund. Double basic interest rate of ECB shall be used to calculate the interest.

If this double interest does not reach 1,5 %, the annual interest rate of 1,5 % shall be applied.

Therefore, there arises a question, whether this legislation is compatible with EU law, the principles of proportionality, fiscal neutrality, equivalence and efficiency in particular.

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Contact

Katarína Balogová

Tax Director

E-mail: Katarina.Balogova@accace.com

Tel.: + 421 2 325 53 000



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