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# News Flash

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**Judgment of the European Court of Justice regarding right to refund of VAT | Accace Slovakia**

## Judgment of the European Court of Justice regarding right to refund of VAT

We would like to draw your attention to the very interesting judgement of the European Court of Justice (hereinafter the „ECJ“) on tax matters, which was decided during April 2018. The ECJ dealt with the case of a Romanian company that required the VAT refund for transactions relating to a tax period that has already been the subject of a tax inspection which has concluded. Below we are giving you a more detailed description of the situation.

### The principle of unity of tax inspections

In the judgement case Nr. C-81/17 Zabrus from April 26, 2018 the ECJ is dealing with the question whether the national regulation, which denies the assessment and recognition of the right to reimbursement of VAT concerning transactions carried out during a period, which has already been the subject of a tax inspection, is compatible with the EU VAT Directive.

Zabrus was subject to a VAT inspection for a part of year 2014, whereby this VAT inspection was concluded in the beginning of year 2015. Zabrus filed a corrective VAT return in May 2015 for the period which had already been subject to a VAT inspection and claimed higher right to VAT deduction. Zabrus was able to support their claim by relevant documents. Tax authorities refused to reimburse the VAT amounts on the ground that claimed sums related to transactions carried out during a tax period, which had already been subject to VAT inspection. **They stated that, in accordance with the applicable national legislation, the principle of the unity of tax inspections precluded the reimbursement of the amounts requested by Zabrus** because, in respect of the period already subject to inspection, no irregularity concerning VAT contributions had been found and the relevant authorities did not adopt any measure laying down steps to be taken by Zabrus. Zabrus applied for annulment of the decision of the Directorate-General. In its application, Zabrus stated that the deduction of VAT is a taxpayer's right, which cannot be restricted if the substantive requirements are

satisfied, even if certain formal requirements have not been complied with.

According to Romanian law a tax payer may correct errors in a VAT return within the limitation period of five years. A tax inspection shall be carried out only once for each tax period. It shall not be permitted to correct a VAT return for tax period that has already been subject to a tax inspection, unless other institutions do not discover new information and do not initiate repeated tax inspection. Regional court dismissed the action on the ground that in this case was no new information found, thus it was not possible to request the correction of VAT return. For the incorrect records is liable only Zabrus themselves.

### The principle of effectivity

ECJ confirms that the right of deduction is a fundamental principle of the common system of VAT, it is subject to compliance with the substantive and formal conditions laid down by the VAT Directive and may not be limited. Based on the principle of effectiveness it is not possible to deny a taxable person the opportunity to correct their VAT returns when they have been subject of a tax inspection. **ECJ took into account the fact that according to respective Romanian regulation there is a significant limitation of right of deduction as opposed to general limitation period of five years for application of right to correct the VAT.**

### The principle of neutrality

The principle of VAT neutrality also requires that the deduction of input tax shall be allowed, if the

substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. Penalty consisting of an absolute refusal of the right of deduction appears disproportionate where no evasion or detriment to the budget of the state is ascertained.

In the Slovak Republic, according to §16 Section 8 of Tax Procedure Code, tax may be decreased, or an excessive deduction increased, on the basis of a supplementary tax return only due application of facts that were not subject to a tax inspection. In case of use of a document, which was not subject to tax inspection, supplementary VAT return can be

submitted and VAT deduction from such document can be applied. This judgment may lead to conclusion that from document, which was already subject to tax inspection, the possibility to supplementary deduction of VAT is not excluded if the substantive conditions for deduction are met. However, when the document was subject to a tax inspection, it should be included in results of tax inspection. For this reason, instead of supplementary tax return, it is more appropriate and safer to handle tax inspection and results with due care and if necessary use ordinary and extraordinary legal remedies. We do not recommend to rely on supplementary VAT return, unless later new facts or documents were found.

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