

TAX HOT TOPICS

06 June 2018

Decisions issued by the Court of Justice of the European Union

Please find below a summary of the most recent cases ruled by the Court of Justice of the European Union („CJEU”), as well as our comments on the implications that may arise at the level of the Romanian taxable persons in terms of the practical application of such decisions.

As a side note, please be informed that the cases decided at the level of the CJEU are relevant, especially considering that Law no. 227/2015 regarding the Fiscal Code expressly provides that in view of uniformly applying the legislation **in the field of value added tax and excises, the tax authorities and other national authorities are required to consider the jurisprudence of the CJEU.**

As such, the interpretations provided by CJEU may prove to be very useful for the taxable persons when justifying or challenging the VAT treatment applicable in specific situations.

C-81/17 Zabrus Siret – Adjustments performed at the level of the VAT returns subject to a previous VAT audit

- ❖ The request made in case C-81/17 concerns the proceedings between **Zabrus Siret SRL** (hereinafter „the Company”) and DGRFP Iasi – AJFP Suceava **where the taxable person may perform any adjustments on the VAT returns that have already been subject to a VAT audit**, in order to claim the right to deduct VAT;

The dispute in the main proceedings

- ❖ On the 25th May 2015, the Company requested, through the VAT return of April 2015, the VAT refund of certain amounts resulting from corrections which were related to a period already subject to a VAT audit;

- ❖ The respective corrections concerned, on one hand, certain accounting notes of VAT compensations and, on the other hand, amounts resulting from transactions related to year 2014 for which the Company identified in its accounts the relevant supporting documents after the the VAT audit was finalized;

- ❖ The tax authorities considered that the Company is not entitled to the VAT refund of the amounts resulting from these adjustments because they relate to operations carried out during a tax period, prior to the period under inspection, which had already been the subject of a VAT inspection and for which there were not initiated any measure laying down steps to be taken in order to make possible the adjustments;

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Decision of CJEU

- ❖ According to CJEU, Directive 2006/112/CE regarding the common system of the value added tax („VAT Directive”) must be interpreted **as precluding national legislation**, such as that at issue in the main proceedings, which, by way of derogation from the five-year limitation period imposed by national law for the correction of VAT returns, **prevents a taxable person from making such a correction in order to claim his right of deduction on the sole ground that that correction relates to a period that has already been the subject of a tax inspection.**

Taxhouse comments

The Zabrus case is mainly relevant because it gives the possibility to a taxable person of making corrections in their VAT returns also for past periods which have already been subject to a tax audit, provided that the request is made within the 5 year statute of limitation and the material and formal conditions for the VAT deductibility are observed.

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For further details, please contact any member of Taxhouse team or send us an e-mail at office@taxhouse.ro.