

13 February 2018

ECJ's case law - deduction of input VAT

The Official Journal of EU dated 29 January 2018 contains the Order of the Court in Case C-314/17 related to the principle of tax neutrality and a risk that input VAT deduction is disputed in cases where a supplier charges VAT even though reverse-charge system should have been applied.

This Order may be interesting to the Croatian VAT payers as they are sometimes faced with doubts whether regular VAT procedure or reverse-charge procedure is applicable (e.g. due to unprecise definition of construction services which are subject to domestic reverse-charge).

The Court has considered the following issue: Is there a breach of the principles of fiscal neutrality and effectiveness of the common system of value added tax under the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax if, in a case such as that in the main proceedings, VAT is levied twice on the same supply, once under the general rules, by the supplier showing the tax in the sales invoice, and a second time, by the customer being charged by means of a tax adjustment notice according to the reverse charge mechanism, and if in practice the right to deduct input VAT is refused and national law makes no provision for the VAT shown in the supplier's invoice to be rectified following the conclusion of the tax audit procedure?

*The Court's Order states as the following conclusion: The principles of fiscal neutrality and effectiveness of the common system of value added tax must be interpreted as **precluding a Member State from refusing to allow the***

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Praksa Suda EU - odbitak pretporeza

U službenom listu Europske unije od 29. siječnja 2018. godine objavljeno je rješenje Suda u predmetu C-314/17 vezano za načelo porezne neutralnosti i rizik osporavanja prava na odbitak pretporeza u slučajevima ako dobavljač zaračuna PDV iako je trebao primijeniti sustav prijenosa porezne obveze.

Ovo rješenje hrvatskim PDV obveznicima može biti interesantno s obzirom da se ponekad susreću s nejasnoćama vezano za to je li primjenjiv redovni postupak obračuna PDV-a ili prijenos porezne obveze (npr. zbog neprecizne definicije što se smatra građevinskim uslugama na koje se primjenjuje tuzemni prijenos poreznih obveza).

Sud je razmatrao sljedeće pitanje: Postoji li povreda načela porezne neutralnosti i djelotvornosti zajedničkog sustava PDV-a koja proizlaze iz odredbi Direktive Vijeća 2006/112/EZ od 28. studenoga 2006. o zajedničkom sustavu poreza na dodanu vrijednost kada se u slučaju kao u glavnom postupku ista transakcija dva puta oporezuje porezom na dodanu vrijednost, prvi put prema općim pravilima, kada dobavljač iskaže porez na prodajnom računu, i drugi put, kada se kupac oporezuje u skladu s odlukom o razrezu poreza prema postupku prijenosa porezne obveze, pri čemu u praksi nije moguće ostvariti pravo na odbitak pretporeza i nacionalno pravo ne predviđa mogućnost da se PDV koji je iskazan kao porez na dodanu vrijednost na dobavljačevu računu ispravi nakon završetka postupka poreznog nadzora?

*Rješenje suda navodi sljedeći zaključak: Načela porezne neutralnosti i djelotvornosti zajedničkog sustava poreza na dodanu vrijednost treba tumačiti na način da **nije dozvoljeno da država članica primatelju isporuke odbije priznati pravo na***

recipient of a supply to deduct input value added tax, where, with respect to the same transaction, value added tax is collected a first time from the provider of the goods or service, since he included it on the invoice he issued, then a second time from the purchaser, in situations in which national legislation does not provide for the possibility of adjusting the value added tax where there is a tax adjustment notice.

odbitak uplaćenog predujma poreza na dodanu vrijednost kada je za jednu te istu isporuku porez na dodanu vrijednost prvi put naplaćen od dobavljača, s obzirom na to da ga je on naznačio na računu koji je izdao, dok ga je drugi put platio stjecatelj, u okolnostima u kojima u nacionalnom zakonodavstvu nije predviđena mogućnost ispravka poreza na dodanu vrijednost u slučaju donošenja odluke o ponovnom obračunu poreza.

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To the Top



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