

ECJ Preliminary Ruling Request (VAT): *Slovenské Energetické Strojárne* (Case C-746/22) – Fővárosi Törvényszék Submits Referral on VAT Refund Procedure, Possibility to Provide New Facts, Evidence Before Final Decision

20 February 2023

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On 20 February 2023, a preliminary ruling request lodged on 6 December 2022 was published in the Official Journal of the European Union. By this referral, Fővárosi Törvényszék (High Court of Budapest, Hungary) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *Slovenské Energetické Strojárne A. S. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (Case C-746/22) on the applicable rules for a VAT refund to taxable persons who are not established in the Member State of refund and whether, under EU law, for the purposes of examining the application for the refund, it is possible to provide new facts and evidence until the final decision is adopted. This is considering that the new facts and evidence were already known to the applicant before the first instance decision was issued but were not submitted to the tax authority at due time.

The Fővárosi Törvényszék requested the ECJ to answer the following questions:

- "(1) Is Article 23(2) of Council Directive 2008/9/EC [[VAT Refund Directive \(2008/9\)](#)] laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC [[VAT Directive \(2006/112\)](#)], to taxable persons not established in the Member State of refund but established in another Member State to be construed as meaning that national legislation – to be specific, Paragraph 124(3) of the az adóigazgatási rendtartásról szóló 2017. évi CLI. törvény (Law CLI of 2017 governing tax administration; 'the Law on tax administration') – which, for the purposes of the examination of applications for a refund of value added tax pursuant to Council Directive 2006/112/EC on the common system of value added tax ('the VAT Directive'), does not allow, at the appeal stage, new facts to be pleaded or new evidence to be relied on or produced, where the applicant was aware of that evidence before the adoption of the first-tier decision but did not present it, even though it was requested to do so by the tax authority, or did not rely on it, thereby creating a material constraint which exceeds the requirements as to form and time limits laid down by Directive 2008/9, is compatible with the requirements laid down in that Directive with regard to appeals?
- (2) Does an affirmative answer to the first question mean that the one-month period indicated in Article 20(2) of [VAT Refund Directive \(2008/9\)](#) is to be considered mandatory? Is the foregoing compatible with the right to an effective remedy and to a fair trial enshrined in Article 47 of the [Charter of Fundamental Rights of the European Union](#) ('the Charter'), with Articles 167, 169, 170 and 171(1) of

the VAT Directive, and with the fundamental principles of fiscal neutrality, effectiveness and proportionality developed by the Court of Justice of the European Union?

- (3) Is Article 23(1) of [VAT Refund Directive \(2008/9\)](#), which relates to the refusal of a refund application in whole or in part, to be interpreted as meaning that national legislation — specifically, Paragraph 49(1) of the Law on tax administration — pursuant to which the tax authority is to bring the proceedings to a close if the applicant taxable person does not respond to a request from the tax authority or comply with its obligation of rectification, failing which it is not possible to examine the application without the proceedings continuing ex officio, is compatible with that provision?"
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European Union; Hungary - ECJ Preliminary Ruling Request (VAT): Slovenské Energetické Strojárne (Case C-746/22) – Fővárosi Törvényszék Submits Referral on VAT Refund Procedure, Possibility to Provide New Facts, Evidence Before Final Decision (20 Feb. 2023), News IBFD.

Exported / Printed on 9 Mar. 2024 by hkermadi@deloitte.lu.