

# ECJ Advocate General Opines on VAT Refunds to Taxable Persons Not Established in the Member State of Reimbursement: *Slovenské Energetické Strojárne* (Case C-746/22) (VAT)

14 December 2023

Report from Stefania Lotito Fedele, VAT Associate, IBFD

On 14 December 2023, Advocate General (AG) Kokott of the Court of Justice of the European Union (ECJ) gave her opinion in the case of *Slovenské Energetické Strojárne A.S. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (Case C-746/22) on the rules for VAT refunds to taxable persons who are not established in the Member State of refund. The opinion also addressed whether new facts and evidence can be provided until the final decision is adopted, according to article 170 of the [VAT Directive \(2006/112\)](#), and articles 20(2) and 23 of the [VAT Refund Directive \(2008/9\)](#).

The AG provided her opinion on all 3 referred questions. Firstly, the AG stated that the interpretation of article 20(2) of the [VAT Refund Directive \(2008/9\)](#) must be that the 1-month period for providing additional information requested by the authority cannot be considered mandatory. Secondly, she stated that the interpretation of article 170 of the [VAT Directive \(2006/112\)](#) and the principles of effectiveness and fiscal neutrality must preclude the application of provisions of national law that exclude the possibility of relying on additional information in appeal proceedings. Thirdly, the AG noted that article 23 of the [VAT Refund Directive \(2008/9\)](#) does not preclude the application of a national provision which, in the case of an application for a refund of VAT submitted by a taxable person established in another Member State, does not take account of that application where that taxable person has failed to provide the mandatory additional information requested by the authority, provided that there is an effective procedure allowing the taxable person to rely, in the course of that procedure, on the additional information which he has failed to provide within the prescribed period.

In this case, the AG suggested to give answer to the referred questions as follows:

"1. Article 20(2) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State [[VAT Refund Directive \(2008/9\)](#)], must be interpreted as meaning that the one-month period laid down therein for providing additional information at the request of the authority considering a value added tax (VAT) refund application submitted by a taxable person established in another Member State cannot be considered mandatory.

2. Article 170 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [[VAT Directive \(2006/112\)](#)], as amended by Council Directive 2008/8/EC of 12 February 2008, Article 20(2) of Directive 2008/9, and also the principles of effectiveness and fiscal neutrality must be

interpreted as precluding the application of provisions of national law which exclude the possibility of relying, in appeal proceedings, on additional information or documents requested by the first-tier tax authority and provided by the taxable person only at the appeal stage to the second-tier tax authority.

3. Article 23 of Directive 2008/9 must be interpreted as not precluding the application of a provision of national law under which proceedings relating to an application for a refund of VAT to a taxable person established in another Member State are discontinued without consideration of the refund application where that taxable person has failed to comply with its obligation to provide additional information at the request of the authority considering the application, pursuant to Article 20 of that directive, provided that there is an effective judicial procedure under national law for appealing against the decision to discontinue the proceedings, allowing the taxable person, in particular, to rely, in the course thereof, on the additional information which it did not provide within the time limit in the discontinued proceedings. Otherwise, the decision to discontinue proceedings should be regarded as a decision to refuse a refund."

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