

ECJ Preliminary Ruling Request (VAT): *Határ Diszkont* (Case C-427/23) – Szegedi Törvényszék Submits Referral on VAT Treatment of Fees on VAT Refund Services

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On 9 October 2023, a preliminary ruling request, lodged on 11 July 2023, was published in the Official Journal of the European Union. By this, the Szegedi Törvényszék (Szeged Court, Hungary) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *Határ Diszkont Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (C-427/23) on whether the processing of VAT refunds against a fee is to be considered ancillary to the VAT-exempt supply of goods to foreign customers and, therefore, exempt from VAT, or whether it is a separate taxable supply of services.

For this reason, the referring court requested the ECJ to answer the following questions:

"1. Is the practice of a Member State according to which the administration of VAT refunds to foreign travellers – which includes the administrative procedures from the time the standard forms for applying for the refund of VAT are submitted up to the refund of the tax – is considered to be a separate supply of services distinct from the tax-exempt supply of goods, on which VAT must be charged and paid in accordance with the general rules, compliant with Article 1(2), Article 2(1)(c), Article 78 and Article 146(1)(e) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive') [VAT Directive (2006/112)] in a situation in which the administration fee, which is a percentage of the VAT to be refunded, is received and invoiced simultaneously with the VAT refund, at a time different from the supply and invoicing of the goods and after the customer has paid the consideration for the goods and those goods have exited for a third country?

2. In the event that the answer to the first question is in the affirmative, is Article 135(1)(d) of the VAT Directive [[VAT Directive \(2006/112\)](#)] infringed by the practice of a Member State whereby the fee charged for administering refunds of the VAT arising on the supply of goods to foreign travellers is not considered to be exempt from VAT as a 'transaction concerning payments or debts'?

3. In the event that the answers to the first and second questions are in the affirmative, is the practice of a Member State compliant with the principle of the protection of legitimate expectations as one of the fundamental principles of the common VAT system where, according to that practice, the issuer of the invoices for the administration fee must also pay VAT retroactively even though the tax authority had already audited that person on various occasions in the years prior to the inspection and during those audits had examined the issuer's practice of considering the administration fee to be exempt from VAT

and had not raised any objection or informed the issuer of any change in the Member State legislation in force until 31 December 2007, which expressly included 'refunds of the tax to foreign travellers processed by the trader under specific legislation' as services exempt from tax?

4. In the event that the answers to the first to third questions are in the affirmative, is the practice of a Member State tax authority compliant with Articles 73 and 78 of the VAT Directive [[VAT Directive \(2006/112\)](#)] where it consists of using as the taxable amount for VAT the consideration shown as exempt on the invoices issued for the administration fee and where, according to the tax authority's decision, the issuer of the invoices must pay VAT on that taxable amount in accordance with the general rules, even though the consideration paid by the foreign travellers does not include that amount?"

Hungary; European Union - ECJ Preliminary Ruling Request (VAT): Határ Diszkont (Case C-427/23) – Szegedi Törvényszék Submits Referral on VAT Treatment of Fees on VAT Refund Services (09 Oct. 2023), News IBFD.

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