

# ECJ Preliminary Ruling Request (VAT): *Modexel* (Case C-680/23) – Tribunal Administrativo e Fiscal do Funchal Submits Referral on Interpretation of 'The Following Period' for Right to Deduct Excess VAT

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Report from Stefania Lotito Fedele, VAT Associate, IBFD

On 12 February 2024, a preliminary ruling request lodged to the Court of Justice of the European Union (ECJ) on 14 November 2023 was published in the Official Journal of the European Union. By this, the *Înalta Curte de Casație și Justiție Tribunal Administrativo e Fiscal do Funchal* (Administrative and Tax Court, Funchal, Portugal) made reference to the ECJ for a preliminary ruling in the case of *Modexel – Consultores e Serviços, SA v. Autoridade Tributária e Assuntos Fiscais da Região Autónoma da Madeira* (Case 680/23) on the interpretation of the expression 'the following period' included in article 183 of the [VAT Directive \(2006/112\)](#) (the Directive), in conjunction with article 22 of the Directive. In particular, the referring court is uncertain on whether that expression is literally limited to the following tax period or whether there may be a time lag between those two periods as a result of the cessation of the activity and the subsequent resumption of that activity (with the deduction being made in the period in which the activity is resumed).

For these reasons, the Tribunal Administrativo e Fiscal do Funchal requested the ECJ to answer the following questions:

"1) Must the expression "the following period" in Article 183 of the VAT Directive [[VAT Directive \(2006/112\)](#)] be interpreted as referring literally to the period which immediately follows in the calendar year?

2) If the answer to question 1 is in the negative, where an undertaking ceases its activity and subsequently recommences that activity, with a period of 15 months having elapsed between those two points in time, is that undertaking entitled to deduct the amount of the excess which it carried forward when it ceased its activity in the first assessment that it files after recommencing its activity?"

