

ECJ Preliminary Ruling Request (VAT): *H GmbH* (Case C-83/23) – Bundesfinanzhof Submits Referral on Refund of Undue VAT Paid

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Report from Martha Caziero, VAT Associate, IBFD

On 12 June 2023, a preliminary ruling request, lodged on 15 February 2023, was published in the Official Journal of the European Union. By this, the German Federal Fiscal Court (Bundesfinanzhof) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *H GmbH v. Tax office of M* (C-83/23) on the existence of a direct claim against the tax authorities of the country of domicile when the taxable person has paid undue VAT. More specifically, the referring court wonders whether the principles established in ECJ case [C-35/05, Reemtsma Cigarettenfabriken](#), principally stating that the taxable person has the right to directly claim the undue VAT in the country where it was paid when obtaining a reimbursement of such VAT from the supplier is excessively difficult or impossible, are applicable to the case at hand, given that insolvency proceedings were opened against the provider's assets.

The Bundesfinanzhof requested the ECJ to answer the following questions:

"1. Does the recipient of a service, who is domiciled in the national territory, have a so-called direct claim against the national tax administration by virtue of the judgment of the Court of 15 March 2007, *Reemtsma Cigarettenfabriken* – C-35/05 (EU:C:2007:167) if:

- (a) the service provider, who is also domiciled within the national territory, issues the service recipient with an invoice that shows the tax incurred at a national level and the service recipient pays the invoice, with the provider then duly paying the tax shown in the invoice,
- (b) the invoiced service is provided in another Member State,
- (c) the service recipient is therefore denied an input VAT deduction in its country of domicile because no tax is owed under the laws of that country,
- (d) the provider then corrects the invoice by removing any reference to the tax incurred at a national level, thereby reducing the invoice amount by the amount of the tax,
- (e) the service recipient proves unable to assert any payment claims against the provider because insolvency proceedings were opened in respect of the provider's assets, and
- (f) the provider, who is not yet registered in the other Member State, has the option to register for VAT purposes in that Member State in order to be able to issue the service recipient with an invoice bearing the relevant tax number in that Member State and showing the tax payable in said Member State, which

would entitle the service recipient to an input VAT deduction in said Member State under the special procedure set out in Directive 2008/9/EC of 12 February 2008 [[VAT Refund Directive \(2008/9\)](#)]?

2. Does the answer to that question depend on whether the national tax administration has refunded the tax paid to the provider merely by virtue of the corrected invoice, even though the provider did not repay anything to the service recipient following the opening of insolvency proceedings?"

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