

ECJ Preliminary Ruling Request (VAT): *Lear Corporation Hungary* (Case C-532/23) – Fővárosi Törvényszék Submits Referral on Late VAT Refund Constituting Application for Late Payment Interest

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On 4 December 2023, a preliminary ruling request, lodged on 18 August 2023, was published in the Official Journal of the European Union. By this, the Fővárosi Törvényszék (Regional Court of Budapest, Hungary) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *Lear Corporation Hungary Autóipari Gyártó Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (C-532/23) on the interpretation of article 183 of the [VAT Directive \(2006/112\)](#) in accordance with the principles of equivalence, effectiveness and fiscal neutrality.

In particular, the referring court is uncertain on whether it is appropriate to consider that a later application for a VAT refund constitutes at the same time an application for interest for late payment, when the taxable person was unable to claim that VAT refund until the moment when the relevant national provision was declared no longer valid, given the ancillary nature of interest and the fact that the application for interest for late payment is governed by the same national provision as the application for a refund of VAT.

In this context, the Fővárosi Törvényszék requested the ECJ to answer the following questions:

"1. Must Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [[VAT Directive \(2006/112\)](#)], and also the principles of equivalence and effectiveness, be interpreted as meaning that, when a taxpayer requests a refund of value added tax (VAT) which he or she could not request previously due to the application of a regulatory requirement that has been declared, in a judgment of the Court of Justice, to be contrary to EU law, it is appropriate to consider that, in that case, the refund request at the same time constitutes a claim for late payment interest, in view of the incidental nature of the interest and the fact that the claim for late payment interest is governed by the same provision of national law as regulates the request for the refund of the VAT, the late repayment of which has caused the default?

2. Is a practice of a Member State compatible with the principles of equivalence and effectiveness, and also, especially, with the principle of fiscal neutrality, where, pursuant to that practice, in the context of an administrative procedure relating to tax, relying on the principle that the parties have the right to limit the subject matter of an action ('the dispositive principle'), a subsequent claim by the taxpayer for late payment interest is rejected on the grounds that his or her first claim for late payment interest, which gave rise to the procedure being initiated, did not include the additional period referred to in the subsequent claim, such that the subsequent claim is classified as a new claim and is declared time-

barred, even though the tax authority did not consider itself to be bound in any way by the dispositive principle in relation to the taxpayer's first claim, but rather has invoked that principle exclusively in relation to the late payment interest claimed for a period that, at the time when the claim giving rise to the initiation of the procedure was submitted, was not yet known, that period having been defined by case-law while that procedure was under way?

3. Having regard to the principles of equivalence, effectiveness and fiscal neutrality should a subsequent claim submitted in the context of an administrative procedure relating to tax, on the basis of the case-law established by the courts, be regarded as constituting a supplement to the first claim, which gave rise to the procedure being initiated, or as a modification of that first claim, where the two claims only differ as regards the interest payment period?

4. Is a practice of a Member State compatible with the principles of equivalence, effectiveness and fiscal neutrality where, pursuant to that practice, a claim submitted after the expiry of the limitation period is declared time-barred without examining whether admissible circumstances exist which may have suspended or interrupted the limitation period, especially in view of the fact that the first claim was submitted by the applicant in 2014, and also that, even though during the limitation period the current legislation was not amended, given that that legislation only established the requirements for requesting a refund of the VAT, in the absence of relevant rules, the Kúria (Supreme Court, Hungary) and the Court of Justice, by means of an extensive interpretation of that legislation, defined in case-law the requirements for claiming late payment interest, such that, during a decisive part of the limitation period of five years, the rules for claiming late payment interest were not only not known by or clear to taxpayers, but rather they did not even exist in the form of legislative provisions?"