

# ECJ Advocate General Opines that Suspension of Limitation Period During a Judicial Review Does Not Affect A Taxable Person's Right to Deduct VAT: *Napfény-Toll Kft.*, (Case C-615/21) (VAT)) – Details

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Report from our correspondent Maria Júlia I. Mendonça

On 2 February 2023, Advocate General (AG) Athanasios Rantos of the Court of Justice of the European Union (ECJ) opined that, in light of the EU law principles of legal certainty and effectiveness, the suspension of the limitation period during a judicial review for tax authorities to assess VAT, does not undermine the right of deduction of a taxable person. In the case of *Napfény-Toll Kft. v. Nemzeti Adó – és Vámhivatal Fellebbviteli Igazgatósága* (Case C-615/21) the AG considered that the tax procedure could be suspended during the domestic judicial review of tax authorities' and whether this suspension could have some effect on successive decisions. Details of the opinion are summarized below.

(a) Facts. *Napfény-Toll Kft.*, a Hungarian based company, deducted from its VAT liability the amount of VAT accrued for goods acquired in 2010 and 2011. In 2015, after carrying out a tax audit, the Hungarian tax authorities concluded that some of the invoices submitted by *Napfény-Toll Kft.* did not correspond to any real economic transaction or were part of a tax fraud of which the taxable person was aware. Therefore, the Hungarian tax authorities found that the company did not have the right to deduct the input VAT corresponding to the goods acquired in 2010 and 2011, and required *Napfény-Toll Kft.* to pay that amount of VAT, plus a fine and a late payment penalty. The company filed an administrative appeal to the General Directorate of Taxation of the Central Hungarian Region. Following that claim, a second-degree administrative decision reversed the first decision as regards the late payment penalty imposed and upheld it in all other respects. The second-degree administrative decision was appealed two other times, in 2018 and 2020, to comply with the judicial decisions that found there was a contradiction in its reasoning. The case was eventually brought to the General Court of Szeged (the referring court).

(b) Issue. According to the referring court, in cases where the tax authorities adopt new decisions within a short period following a judicial decision and order new proceedings without materially complying with the judicial decision, the limitation period for the tax authorities to assess any tax may be significantly prolonged. This makes it difficult for the taxable person to exercise its right to deduct VAT provided for in [Directive 2006/112](#). Therefore, the referring court decided to stay the proceedings to confirm whether the Hungarian legislation and practice concerning the suspension of limitation periods for an unlimited period are compatible with EU law, particularly with the principles of legal certainty and effectiveness.

(c) Advocate General's Opinion. The AG started his analysis by observing that neither Directive 2006/112 nor Regulation 2988/95 contain specific rules governing the case at hand. Thus, under the principle of procedural autonomy, it falls within the competence of the EU Member States to establish the rules to be

applied on limitation periods for legal proceedings and on the suspension of such periods, respecting the general principles of EU law, in particular, the principles of equivalence, effectiveness and legal certainty.

According to the AG, under the principle of equivalence the EU Member States cannot establish a limitation period for actions based on a breach of EU law less favourable than that applied to actions of the same type related to a breach of domestic law. The AG considered this requirement is met in the case at hand.

Regarding the principle of effectiveness, the AG noted that the EU Member States' procedural rules must not render impossible or excessively difficult in practice, to exercise rights conferred by the EU law, such as the right to deduct VAT foreseen in Directive 2006/112. The AG also pointed out that the suspension of the limitation period during judicial proceedings aims precisely to ensure respect for the principle of effectiveness. Nevertheless, the AG also indicated that since the duration of those proceedings does not depend on the measures taken by tax authorities, the taxable persons' right to appeal could be abused to prevent tax authorities' assessments.

Then, the AG recalled that the rules on limitation periods fulfil the function of ensuring legal certainty by ensuring that the taxable persons' position before tax authorities cannot be called into question indefinitely. The suspension of the limitation period during a judicial review cannot be regarded as a factor that jeopardizes indefinitely the taxable person's right to deduct VAT. Moreover, the fact that tax authorities adopt new decisions to enforce judicial reviews does not constitute a breach of the principle of legal certainty.

Therefore, in the AG's view, the EU principles of effectiveness and of legal certainty do not preclude national legislation under which the limitation period for tax authorities to assess the VAT due by a taxable person is suspended for the duration of a judicial review, even where appeals are brought against consecutive decisions of tax authorities on the same matter.

Finally, after considering the principle of good administration and the second subparagraph of article 47 of the Charter of Fundamental Rights of the EU, the AG pointed out that it is for the referring court to assess, taking into account all the circumstances of the case, including its complexity, whether the repetition of the tax proceedings and judicial reviews is attributable to faults coming from the tax authorities or from the national courts. In such a case, the referring court must ponder the possible existence of the taxable person's right to receive a compensation.

In light of the above considerations, the AG proposed that the ECJ answers the question referred by the referring court as follows:

"The principles of legal certainty and effectiveness of Union law must be interpreted as not precluding a regulation of a Member State by virtue of which, in the field of value added tax, the period of prescription of the right of the Tax Administration to liquidate the tax is suspended during the entire duration of the judicial control in question, even when that appeal is directed against successive decisions adopted by a tax authority and that deal with the same tax.

However, it will correspond to the competent national court, taking into account all the circumstances of the case, such as the complexity of the matter, to assess whether the repetition of the tax procedure and the judicial controls in question have been carried out, mainly, because of deficiencies of the tax

administration or if the delay can be attributed to the national courts, and draw from it the appropriate consequences, including the existence of a possible right to compensation in favour of the corresponding taxpayer."

(Unofficial translation)

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