

THE RIGHT TO DEFAULT INTEREST ON LATE VAT REFUNDS

Case C-107/10 Enel Maritsa Iztok 3

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Case C-107/10 was heard by the Court of Justice following a reference for a preliminary ruling by the Bulgarian Sofia Administrative Court made in the course of the proceedings between Enel Maritsa Iztok 3 AD ('Enel') and the Bulgarian tax authorities.

The reference concerns the right of Enel to default interest on the VAT refunded to the company following a three-month VAT deduction carry-forward period and a 45-day VAT refund period which was prolonged due to an initiated VAT audit by the Bulgarian tax authorities. Due to a change in the VAT legislation which was adopted in the meantime the revenue authorities refused to pay default interest to Enel for the period between the lapse of the initial 45 days for VAT refund and the end of the tax audit proceedings and paid default interest to the company only for the time period between the end of the tax audit and the actual remittance of the money.

The Court of Justice examined the questions referred to it in the light of the existing case law and of the common principles of fiscal neutrality, protection of legitimate expectations and proportionality and concluded that Article 183 of Directive 2006/112 is to be interpreted as precluding national legislation under which the normal period for refunding excess value added tax, at the expiry of which default interest is payable, is extended where a tax investigation is instigated, the effect of the extension being that such interest is payable only from the date on which the investigation is completed.

In view of the above, according to the interpretation given by the Court of Justice each taxable person is entitled to receive default interest on the VAT to be refunded to him from the date on which the regular period for refunding the tax lapses regardless of any extension of that term due to a tax audit.

By the time the judgment of the Court of Justice in the Enel case was delivered, the Bulgarian VAT Act had been already amended and aligned with the case-law of the ECJ although the amendments had effect only for cases which occurred after 01.01.2010. In addition, the Bulgarian Supreme Administrative Court had come to the same findings as the Court of Justice in a number of cases preceding the Enel judgment.

In view of the above, the only "grey zone" which appears to remain following the legislative amendments of the VAT Act and the Enel Judgment of the Court of Justice concerns the cases of VAT refund which occurred between the end of 2007 and the beginning of 2010 when the arbitrary statutory provision of the VAT Act was in force.

Although it looks like the Enel judgment would not lead to legislative amendments or major changes in the administrative practice or the case law, it proves that the Bulgarian courts already interpret and apply the EU VAT legislation correctly and in compliance with the general principles of the VAT system. We could only hope that the tax administration would also abide by those rules and that the taxable persons would receive timely refund of the VAT paid in excess and a fair compensation for any possible delays in the form of default interest.

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