„Krytyka Prawa", tom 16, nr 4/2024, s. 330–353, ISSN 2080-1084, e-ISSN 2450-7938, © 2024 Authors.

OĽGA KMEŤOVÁ[1], MAGDALÉNA FREŇÁKOVÁ[2], JOZEF LUKÁČ[3]

Changes in the Practice of Resolving Cases of Financial Compensation for Vat Refund Retained During Tax Audit in the Slovak Republic[4]

Submitted: 12.06.2024. Accepted: 26.07.2024

Abstract

In the state in which the Slovak Republic functioned until 31 December 2016, there was no legal regulation of interest on VAT refund, which would allow the tax administrator to award taxpayers compensation for the retained VAT refund during tax audit. The institution of "compensation for VAT refund retained during tax audit" (provision of Article 79a) was incorporated into the Act on VAT only with effect from 1 January 2017 under the influence of the decision-making activity of the Court of Justice of the European Union in this area. Based on the analysis of the examined issues in the current decisions of the Court of Justice of the European Union and the Supreme Court of the Slovak Republic, the objective of this article is to propose solutions de lege ferenda for the system functioning in the Slovak Republic in connection with the problem of compensation for VAT refund retained during tax audit for the period up to 31 December 2016, as well as to point out other unresolved matters related to the amount of interest and the period for which interest on VAT refund in question is to be calculated in light of the current legislation of European Union in this area.

Keywords: value added tax (VAT), excess deduction of VAT, interest on VAT refund, tax audit.

[1] Oľga Kmeťová, JUDr., CSc. – University of Economics in Bratislava (Slovakia); e-mail: olga.kmetova@euba.sk.

[2] Magdaléna Freňáková, PhD – University of Economics in Bratislava (Slovakia); e-mail: magdalena.frenakova@euba.sk; ORCID: 0000-0002-8444-1334.

[3] Jozef Lukáč, PhD – University of Economics in Bratislava (Slovakia); e-mail: jozef.lukac@euba.sk; ORCID: 0000-0003-2513-4390.

[4] This article is a partial output of the project of young researchers and PhD students, No. I-24-102-00, 2024: *Marginalised Roma Communities In The Context Of Financial And Digital Education*.

„Krytyka Prawa", tom 16, nr 4/2024, s. 330–353, ISSN 2080-1084, e-ISSN 2450-7938, © 2024 Authors.

OĽGA KMEŤOVÁ, MAGDALÉNA FREŇÁKOVÁ, JOZEF LUKÁČ

Zmiany w praktyce rozwiązywania spraw rekompensaty finansowej za zwrot podatku VAT zatrzymany podczas kontroli podatkowej w Republice Słowackiej[5]

Streszczenie

W stanie prawnym, w jakim Republika Słowacka funkcjonowała do dnia 31 grudnia 2016 r., nie istniała regulacja prawna dotycząca odsetek od zwrotu podatku VAT, która pozwalałaby organowi podatkowemu na przyznanie podatnikom rekompensaty za zatrzymany zwrot podatku VAT w trakcie kontroli podatkowej. Instytucja „rekompensaty za zwrot VAT zatrzymany podczas kontroli podatkowej" (przepis art. 79a) została wprowadzona do ustawy o VAT dopiero z dniem 1 stycznia 2017 r. pod wpływem działalności orzeczniczej Trybunału Sprawiedliwości Unii Europejskiej w tym zakresie. W oparciu o analizę badanych kwestii w aktualnych orzeczeniach Trybunału Sprawiedliwości Unii Europejskiej oraz Sądu Najwyższego Republiki Słowackiej, celem niniejszego artykułu jest zaproponowanie rozwiązań *de lege ferenda* dla systemu funkcjonującego w Republice Słowackiej w związku z problemem rekompensaty zwrotu podatku VAT zatrzymanego w toku kontroli podatkowej za okres do 31 grudnia 2016 r., a także wskazanie innych nierozwiązanych kwestii związanych z wysokością odsetek oraz okresem, za który odsetki od przedmiotowego zwrotu podatku VAT mają być naliczane w świetle obowiązującego ustawodawstwa Unii Europejskiej w tym zakresie.

Słowa kluczowe: podatek od towarów i usług (VAT), nadmierne odliczenie VAT, odsetki od zwrotu VAT, kontrola podatkowa.

[5] Ten artykuł jest częściowym wynikiem projektu młodych naukowców i doktorantów, nr I-24-102-00, 2024: *Zmarginalizowane społeczności romskie w kontekście edukacji finansowej i cyfrowej.*

 DOI: 10.7206/kp.2080-1084.737

Introduction

In the present legislative landscape of the Slovak Republic, in connection with the performance of tax audit in the application of excess deduction of value added tax (hereinafter referred to as "VAT"), the legislator introduced a new institution of "compensation for VAT refund retained during tax audit," with effect from 1 January 2017 in the Act on VAT[6]. It was a response to the fact that in terms of tax audit, the auditing entity retains large amounts of funds from the audited entity, which creates enormous difficulties for the audited entities, which ends with complaints being filed on a large scale. Specifically, according to the relevant provisions, a tax audit may last for one year, regardless of whether it is an inspection of a small, a medium or a large sized enterprise, whether it is an enterprise that performs exclusively domestic deliveries of goods and services or performs deliveries of goods and services mainly to other states, while the year of retention of funds can take the form of liquidation in individual cases (note: the one-year period does not run if the tax audit is interrupted). In practice, however, it is not necessary for some tax audits to last several years; there is also evidence of 4 to 6 years lasting tax audit in connection with VAT.[7] Based on this situation, the legislator approved a "concession," according to which the VAT payer is entitled to financial compensation for VAT refund retained during tax audit, the so-called "interest on VAT refund," The interest on VAT refund is thus considered to be financial compensation for the refund of the excess deduction after the lapse of the time limit set by law. It compensates the taxpayer for the restriction to dispose of the retained funds.

In reality, this "welcome step" of the state towards entrepreneurs was not the only reason for the new legislation. The essential reason was the need to resolve the situation which arose in connection with the decision-making activity of the Court of Justice of the European Union – in particular, the adoption of a judgment[8]

---

6 Act No. 297/2016 Coll., amending Act No. 222/2004 Coll. on Value Added Tax, as amended, and amending Act No. 331/2011 Coll., amending and supplementing Act No. 563/2009 Coll. on Tax Administration (Tax Procedure Code) and on Amendments and Supplements to Certain Acts and amending and supplementing Certain Acts, as amended.

7 In the case of the taxable entity ANTIK, spol. s r. o., with its registered office at Timonova 13, 040 01 Košice, Identification No. 36 174 297, the tax audit for the tax period July 2005 started on 17 October 2005 and ended on 24 May 2010, therefore, it lasted 4 years and 7 months; the tax audit for the tax period of February 2006 started on 4 May 2006 and ended on 4 June 2010, lasting 4 years and 1 month.

8 Case C – 120/15 *Kovozber, s. r. o. v. the Tax Office Košice* EU:C:2015:730.

imposing the need for compensation for the retained VAT refund, and which would be unenforceable in practice in case of the absence of national legislation.

However, practice has shown that in the case of this new legal regulation, in the Slovak Republic it was only a partial solution, insufficiently regulated by legislation. As a result, many entrepreneurs could pursue their justified claims under the above-mentioned legal grounds, despite the amended legal regulation, only after long-term proceedings were initiated by them against the tax authorities – which is the case also today.

Based on the analysis of the examined issues in the current decisions of the Court of Justice of the European Union and the Supreme Court of the Slovak Republic, the objective of this article is to propose solutions de lege ferenda for the Slovak Republic in its current state of affairs in connection with problem of compensation for the VAT refund retained during tax audit for the period up to 31 December 2016, as well as to point out other unresolved issues related to the amount of interest and the period for which the interest on VAT refund in question is to be calculated in light of the current legislation of European Union in this area.

The legislative basis of interest on VAT refund and the impact of the decision-making activity of the Court of Justice of the European Union on national law

According to Article 1(1) of the Constitution of the Slovak Republic Act No. 460/1992 Coll. (hereinafter referred to as "the Constitution"), the Slovak Republic is a sovereign, democratic state governed by the rule of law.

In accordance with Article 2(2) of the Constitution, state bodies may act only on the basis of the Constitution, within its limits, and to the extent and in a manner which shall be laid down by the law.

The concept of a state governed by the rule of law is one of the key concepts upon which the constitutional system of our state, the Slovak Republic, is based. This concept also has its key principles, the observance and fulfilment of which is relevant e.g. for the fulfillment of the relationship between the state, its bodies, and natural and legal persons – thus, the entities that form the state and its essence, from which the legitimacy of individual state bodies is derived, etc.

The content of the term "the state governed by the rule of law" encompasses several principles, where each of them individually – but also in relation to each other – constitutes a state governed by the rule of law. The principle of legal certainty, the principle of the citizen's trust in the state and in the legal order are only some of them, and they are key components of the state governed by the rule of

 DOI: 10.7206/kp.2080-1084.737

law. The principle of legal certainty consists of several principles, including the principle of clarity (certainty), comprehensibility and predictability, the principle of legitimate expectations, which means the predictability of the action of public authorities, the principle of protecting citizens' trust in the law, the principle of protecting rights acquired in good faith, and the principle of non-retroactivity.

In connection with the provision of Article 2(2) of the Constitution, according to which state bodies may act only on the basis of the Constitution, within its limits, and to the extent and in a manner which shall be laid down by the law, it is natural to expect that state bodies will be equipped with such legal provisions that will fulfil the principles of a state governed by the rule of law under Article 1(1) of the Constitution. These legal provisions must be clear, comprehensible, they must lead to the fact that in a given situation the entity affected by a given regulation (for example, a participant of tax proceedings, an entity subject to tax audit, etc.) can expect with a high level of certainty the course of action of the state body (for example a tax office) and also the consequences of this procedure.

These legal provisions must also meet the imperative of Article 2(2) of the Constitution, that is, that nothing other than the procedure established by law can be performed by state bodies. In other words, according to the provision of Article 2(2) of the Constitution, a state body must not be equipped with such powers which make it unclear how the state body in question will proceed when said state body is entitled to proceed in some way, and what consequences its actions can and should cause.

There is no doubt that the tax office – as an administrator of VAT (according to the relevant provisions of the tax regulations) – is a state body. It is therefore not disputed that the tax administrator in this case is bound by Article 2(2) of the Constitution – nor that the legal provisions governing its conduct must fulfil the requirements of Article 1(1) of the Constitution.

According to Article 7(2) of the Constitution, the Slovak Republic may transfer the exercise of a part of its rights to the European Communities and European Union by an international treaty ratified and promulgated in a manner laid down by law – or on the basis of such treaty. Legally binding acts of the European Communities and European Union shall have primacy over the laws of the Slovak Republic.

At the same time, it needs to be emphasised that national courts applying respective national laws are bound to interpret these laws as much as possible in terms of the wording and purpose of the Council Directive 2006/112/EC[9] (hereinafter referred to as "the VAT Directive"), to achieve the result sought by the VAT Directive

[9] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L347/1.

and, consequently, comply with Article 288(3) of the Treaty on the Functioning of the European Union (hereinafter referred to as "the TFEU"). This obligation of conforming the interpretation of national law with European Union law is intrinsically linked to the system of the TFEU, as it enables national courts, in dealing with matters within their jurisdiction, to ensure the full effectiveness of European Union law when they resolve the disputes submitted to them (e.g. the judgment of 11 April 2013, Rusedespred, C-138/12, EU:C:2013:233, paragraph 37 and the judicial decisions cited).

According to existing judicial decisions, a national court, which is required to apply provisions of EU law within the scope of its jurisdiction, has the duty to ensure full effect of those provisions, while – if necessary – refrain from applying on its own initiative any conflicting provisions of national law without having to request or wait for a prior annulment of this provision by legislative means or by any other constitutional procedure (the judgment of the Court of Justice of the EU of 5 July 2016, Ognyanov, C-614/14, EU:C:2016:514, paragraph 34 and the case-law cited).

It is without any doubt that value added tax entities, thus, business entities that apply excess deductions of VAT, are regulated entities which, however, are subject to constitutional protection against any arbitrariness of state bodies and are granted the protection of their rights, which must not be limited beyond the extent necessary to achieve the declared objective – in this case, the performance of a tax audit.

As part of the analysis of the term *"excess deduction"*, we searched for the given term on the "judikaty.info" website. The search results as of 26 April 2021 produced the following data:

- The Constitutional Court of the Slovak Republic registered 243 documents in the case of excess deduction.
- The Court of Justice of the European Union registered 27 documents related to this issue.
- Regional courts of the Slovak Republic registered 2032 documents with the issue of excess deduction.
- Professional articles dealing with this issue are represented in the number of 30 documents.

By analysing the excess deductions applied within the Slovak Republic, we statistically tested data from the List of Tax Entities registered for VAT with the amount of the excess deduction through the Financial Administration portal. The results of our survey are presented in Table 1.

 DOI: 10.7206/kp.2080-1084.737

Table 1. Analysing the "Excess Deduction" applied within the Slovak Republic

Descriptive Statistics	
	Excess Deduction
Valid	535116
Mean	6123.360
Std. Deviation	376782.046
Minimum	0.000
Skewness	130.968
Std. Error of Skewness	0.003
Kurtosis	19160.931
Std. Error of Kurtosis	0.007

Note: For nominal text variables, not all values are available.
Source: authors' own calculations.

Table 1 shows that the number of excess deductions applied for the period of reporting the relevant statistics by the Financial Administration of the Slovak Republic is more than 535 thousand. The average value of the excess deduction was EUR 6,123. The minimum amount is at level 0 €, which is logical given that we are talking about an excess deduction, not about own tax liability. Kurtosis was relatively high on the scale of excess deductions and distant from 0, which means that the values in the set are far from the normal distribution in the set. Skewness tells us that in our case of deliberation (rationality) it is a left-sided distribution, which means that excess deductions in the set reach values to the left of the average.

According to the relevant provisions of the Tax Procedure Code[10] (Article 44 and following), it is possible to perform a tax audit of an entity that applies an excess deduction of VAT. According to Article 46(10) of the Tax Procedure Code, the time limit for the performance of a tax audit shall not be longer than one year since the date of commencement of the tax audit. When performing this type of tax audit, the amount of funds that the business entity requests to be repaid is retained by the tax office (tax administrator). This fact often causes such a burden on entrepreneurs that it creates serious problems in carrying out further business activities. When bridging them, the entrepreneur is often forced to cover this cash

[10] Act No. 563/2009 Coll. on Tax Administration (Tax Procedure Code) and on Amendments and Supplements to Certain Acts.

outage by taking a short-term loan, an overdraft, etc. However, this procedure increases the entrepreneur's expenses that are not directly related to their activity. In addition, these short-term loans are among the most expensive loans – and not every entrepreneur can afford them due to their specific economic situation. In light of the above, the legislator came up with the institution of compensation for VAT refund retained during tax audit in cases where a tax office initiated a tax audit within the time limit for refund of the excess deduction in accordance with Article 79(1), (2) or (5) of the Act on VAT.

According to Article 79a of the amended Act on VAT, the VAT payer is entitled to receive an interest on VAT refund in the amount equal to double the basic interest rate of the European Central Bank (hereinafter referred to as "ECB") valid on the first day of the calendar year for which the interest is charged. In case that the double the basic interest rate is below 1.5%, the interest on VAT refund is calculated using an annual interest rate of 1.5%. The interest on VAT refund is to be calculated on the amount of VAT refund for each day starting from the lapse of the 6-month period until the day following after the lapse of the time limit for the VAT refund according to Article 79(1), (2) or (5) until the VAT refund payment date (inclusive).

At the same time, the legislator stated in the transitional provisions on amendments effective from 1 January 2017 in Article 85ke of the Act on VAT, that the taxpayer has the right to claim interest on VAT refund under Article 79a, even when the tax audit within the time limit for payment of VAT refund according to Article 79(1), (2) or (5) started before 1 January 2017 and was not finished as of 1 January 2017. The provision of Article 79a will not apply in case that the tax audit within the time limit for payment of VAT refund under Article 79(1), (2) or (5) is completed by 31 December 2016 (inclusive).

This transitional provision is used by the tax authorities in many court proceedings, as this provision, by its wording, precludes the award of interest on VAT refund from tax audits already completed by 31 December 2016.

In the decision-making activity of the chambers of the Administrative College of the Supreme Court of the Slovak Republic (hereinafter referred to as "the Supreme Court") thus raised the current issue of interest on VAT refund during tax audits completed by 31 December 2016, based on the direct application of the judgment of the Court of Justice of the European Union in case C-120/15 Kovozber of 21 October 2015. In these cases, the awarding of interest on VAT refund in the Slovak legal system is precluded by an explicit legal regulation by which the legislator limited the right of tax subjects only to tax audits from 1 January 2017 and before 1 January 2017 only to those that were not completed by 31 December 2016 inclusive.

The Financial Directorate of the Slovak Republic turned to the Supreme Court with a request for a unifying opinion on the application of the provision of Article

 DOI: 10.7206/kp.2080-1084.737

85ke – transitional provision to the Act on VAT on amendments effective from 1 January 2017, namely by letter Ref. No. 293981/2019 of 27 May 2019, in which it called for unification of the decision-making activity of the chambers of the Supreme Court on the basis of judgments in cases Ref. No. 3Sžfk/41/2017 of 23 February 2019 (Lujan Plus, s. r. o. contra the Financial Directorate of the Slovak Republic), Ref. No. 5Sžfk/24/2017 of 28 March 2019 (AlfaPark, s. r. o. a spol contra the Financial Directorate of the Slovak Republic) and Ref. No. 3Sžfk/4/2019 of 17 April 2019 (Ingram Micro Mobility Austria GmgH Vienna contra the Financial Directorate of the Slovak Republic).

The Administrative College of the Supreme Court, at its meeting on 30 October 2019, adopted the following opinion to unify the decision-making activity of the Supreme Court regarding compensation for VAT refund retained during tax audit:

> "The provision of Article 79a of Act No. 222/2004 Coll. on Value Added Tax, as amended, effective from 1 January 2017 (Compensation for VAT refund retained during tax audit) is in the ratio of speciality to the provision of Article 79(3) of Act No. 563/2009 Coll. on Tax Administration (Tax Procedure Code) and on Amendments and Supplements to Certain Acts, as amended, effective from 1 January 2012 (Tax Overpayments and Interest).
>
> National regulation of the legal order of the Slovak Republic consisting in the provision of Article 85ke (the second sentence) of Act No. 222/2004 Coll. on Value Added Tax, as amended from 1 January 2017 (Transitional provision on amendments effective from 1 January 2017), as amended by: *"The provision of § 79a shall not apply if the tax audit within the time limit for payment of VAT refund under § 79 paragraphs (1), (2) or (5) is completed by 31 December 2016, inclusive."*, is incompatible with European Union law, in particular with the order of the Court of Justice of the European Union in case C-120/15 Kovozber, which takes precedence with ex tunc effect. To ensure compliance with European Union law, public authorities and courts are required to refrain from applying this provision.
>
> The Court of Justice of the of the European Union, in its order issued in case C-120/15 Kovozber, which concerns the Slovak legal order, expressed the unequivocal conclusion that *"The first paragraph of Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prescribes that default interest relating to the refund of excess value added tax is to be calculated only as from ten days after completion of the tax inspection."* In the grounds of that resolution, paragraph 32, he stated: „Since, in any event, the Court has no jurisdiction to interpret national law in

> a particular case or to apply a rule of European Union (see, in particular, case C-160/09 Ioannis Katsivardas – Nikolaos Tsitsikas, EU:C:2010:293, paragraph 24), it is for the national court, which alone has direct knowledge of the procedural conditions for actions for damages brought against the State, to ascertain whether the principles of equivalence and effectiveness have been observed in the case in which it is acting and, where appropriate, to ensure that they are complied with. As the national court has jurisdiction to apply the provisions of European Union law, it has a duty to ensure their full effect (see, to this effect, the order issued in case C-654/13 Delphi Hungary Autóalkatrész Gyártó, EU:C:2014:2127, paragraphs 37 and 38 and the case-law cited)."

The Supreme Court, as the court of cassation (last-resort) appeal, first of all draws attention to the need for the so-called euro-conform interpretation of national law, in accordance with the judicial decisions of the Court of Justice of the European Union, which interprets Article 183 of the VAT Directive. The judgments of the Court of Justice of the European Union are undoubtedly a legally binding interpretation of the VAT Directive and are a source of law in the territory of all Member States of the European Union. According to Article 7(2) of the Constitution of the Slovak Republic and the principle of the primacy of European Union law over national law (including the case law of the Court), public authorities are obliged to interpret all national provisions in line with the euro-conform approach, so that their application contributes to the implementation of the requirement to ensure effective judicial and administrative protection of the rights that the natural persons and the legal persons derive from the legal order of the European Union, whereas the law of the European Union takes precedence over national legal norms in the event of a conflict between its legal norms and the legal norms of a Member State.

In order C-120/15 Kovozber of 21 October 2015, the Court of Justice of the European Union stated that paragraph 1 of Article 183 of the VAT Directive must be interpreted as precluding national legislation within the meaning of Article 79(1), (2) of the Act on VAT, regulating the calculation of default interest due to delay in the return of excess deduction after the expiry of the period of 10 days after the completion of the tax audit. In this order, the Court referred to its earlier judicial decisions, in particular Enel Maritsa Iztok 3 AD, C-107/10, paragraphs 51, 52 and 53; further Rafinăria Steaua Română, C-431/12, paragraph 23; Delphi Hungary Autóalkatrész Gyártó, C-654/13, paragraph 32; Alicja Sosnowska, C-25/07; and basically quoted known conclusions. It follows from the judicial decisions of the Court of Justice of the EU that neither courts nor administrative authorities can rely on the literal wording of the national legislation in force and effective during

 DOI: 10.7206/kp.2080-1084.737

the relevant period, since application is precluded by Article 183 of the VAT Directive. Therefore, if an administrative body concludes that the taxable person has rightly applied the right to the refund of excess deduction and decides on the right to the payment of default interest on VAT refund retained, it should approach the issue in accordance with European Union law and in the euro-conform way. The VAT Directive has direct effect in relation to Member States which have imperfectly transposed its wording; Article 183 of the VAT Directive must therefore be applied directly. The existing body of judicial decisions offers an interpretation that for a properly applied excess deduction which has been repaid late, the taxable person is entitled to interest which cannot be regarded as a penalty for the tax administrator but as a generalized compensation for pecuniary damage to the taxpayer due to the impossibility of using the funds in the amount of the retained VAT refund.

The Court of Justice of the European Union stated that *"in accordance with the case law of the Court of Justice of the European Union, when the refund to the taxable person of the excess VAT is not made within a reasonable period, the principle of fiscal neutrality of the VAT system requires that the financial losses incurred by the taxable person owing to the unavailability of the sums of money at issue are compensated through the payment of default interest."* (paragraph 24).

From the order of the Court it further follows that the period for refunding excess VAT can in principle be extended for the purpose of carrying out a tax audit without having to consider this deadline unreasonable, if this extension does not exceed the limits of what is necessary for the proper execution of this tax audit. However, the Court emphasised that since the taxable persons cannot temporarily dispose of funds in the amount of the excess VAT, they are affected by an economic disadvantage, which should be compensated by the payment of interest, which guarantees compliance with the principle of fiscal neutrality. According to the Court, existing judicial decisions imply that in calculating default interest, the starting point is the date on which the excess VAT should normally have been repaid in line with the VAT Directive (paragraph 29). The Court has also ruled on the question of the fiscal neutrality of the VAT system, which the Member States must take into account when determining the conditions for the refund of excess VAT. According to the Court, these conditions must enable the taxable person to be refunded the full amount resulting from the excess VAT under reasonable conditions, which means that the refund will be made within a reasonable period of time, paid in cash or in a comparable way, while the accepted method of refund must in no case pose any financial risk for the taxable person (paragraph 21).

It should be noted that the tax administrator undoubtedly has the right to audit the correctness of the deduction applied as it is commonly known that excess deduction is a VAT institute often abused for tax fraud. The legitimate interest of

the state is to enable tax entities to fulfil their obligations in a proper and legal manner. To achieve this goal, the state must have adequate means to verify claims, prevent tax fraud, and control the fulfilment of tax obligations. Financial authorities are obliged to remove any doubts regarding a claim, for which they must be granted a reasonable time period.

If the tax audit starts within the time limit for refunding the excess deduction, the refund of the excess deduction is postponed until the completion of the tax audit, and the amount of the excess deduction for refund depends on the result of the tax audit and thus determined excess deduction should be refunded within ten days of the completion of the tax audit. As the taxpayer cannot temporarily dispose of funds in the amount of the excess deduction during the tax audit, from 1 January 2017, a financial compensation (interest on VAT refund) is granted to the taxpayer for the period of retaining the VAT refund. An entitlement to interest on VAT refund shall be granted to the payer if the period of retention of the VAT refund is more than 6-month period from the date of lapse of the time limit for the VAT refund. The state, therefore, has six months to exercise its competence to audit the legitimacy of the excess deduction and, at the same time, that period of retention of funds is not covered by the institution of "compensation for VAT refund retained during tax audit," the so-called "interest on VAT refund." The calculation of interest on VAT refund after the expiry of the general period for the VAT refund on the basis of the tax return, without a reasonable period for tax audit, would deny the principle of equivalence and effectiveness and limit the exercise of state law to ensure proper tax collection through tax audit.

However, if the tax administrator exceeds that period, they must compensate the taxable entity for the financial disadvantage which they had to bear during the verification of the excess deduction. When two interests meet, the legitimate interest of the taxpayer in timely refund of excess VAT and the interest of the tax administrator to audit the right to an excess deduction, it must be concluded that the taxpayer is obliged to bear the verification "free of charge" only for a certain reasonable time period. From the taxpayer's perspective, the negative effects of the long waiting time for refund of excess VAT become, in principle, a serious interference with the guaranteed right to own property as well as the right to conduct business. It is, therefore, necessary for the taxpaying entity to receive compensation from the state, which represents a general compensation for pecuniary damage to the taxpayer due to the impossibility of using the funds in the amount of the retained VAT refund.

Diametrically different periods may elapse in individual cases between the moment of the claim for VAT refund and the moment of the enforceable right to the payment of VAT refund, considering the nature of the matter, the speed of the

 DOI: 10.7206/kp.2080-1084.737

tax administrator's procedure or other facts. Even today, there are entities that have undoubtedly received the applied excess deduction with a considerable time lag from the filing of the relevant tax returns. This delay, with reference to the above, can lead to a significant interference with the flow of money in the management of a business entity – and cause additional costs. The Court of the Justice of the European Union in its judgment issued in the Sosnowska case[11] also summarised its view on the issue of refunding excess VAT. The Court of Justice argued that although the Member States have a certain freedom in determining the conditions for the refund of excess VAT, these conditions cannot call into question the principle of fiscal neutrality by making the taxable persons bear whole of the burden of the VAT or a part of it. The rules must first enable the refund of the full amount resulting from the excess VAT to the taxable person, under reasonable conditions. The refund should therefore be made within a reasonable period of time by paying cash or in a comparable way, and the method of refund must not represent a financial risk for the taxable person (see: judgment made in case Enel Maritsa Iztok 3 AD, paragraph 33 and Judgment Alicja Sosnowska, paragraph 17).

The arbitrariness of the Member States in the issue of refunding excess VAT could seriously endanger the functioning mechanism of the common VAT system. Therefore, the role of administrative bodies deciding on the award of interest to the payer for late payment of a reasonably applied excess deduction is to base their decision-making on the conclusions of the existing judicial decisions of the Court of Justice of the European Union and, in view of the imperfect national legislation, to apply Article 183 of the VAT Directive (see the judgment of 24 October 2013 in case C-431/12 Rafinăria Steaua Română, ECLI:EU:C:2013:686, paragraph 23).

Deficiencies in the amendment to the Act on VAT in respect of interest on VAT refund

With regard to the above, it can be stated that the exercise of the primacy of European Union law over the law of the Slovak Republic is hampered by national regulations of Article 85ke of the Act No. 297/2016 Coll., amending Act No. 222/2004 Coll. on Value Added Tax, effective from 1 January 2017 (transitional provision to the Act on VAT on amendments effective from 1 January 2017). This has been dealt with by way of judicial decisions in the above-cited opinion of the Administrative College of the Supreme Court of the Slovak Republic of 30 October 2019, Ref. No. Snj 36/2019, published in the Collection of Judicial Decisions and Opinions of the

[11] Case C – 25/07 *Alicja Sosnowska v. Dyrektor Izby Skarbowej Ośrodek Zamiejscowy w Wałbrzychu* EU:C:2008:395.

Supreme Court and Courts of the Slovak Republic 6/2019 under No. 56. It was found that the provision of the Act on VAT in question is contrary to the European Union law and contrary to the conclusions expressed in the order C-120/15 Kovozber, and in order to ensure a compliance with the European Union law, courts and public authorities are required to refrain from applying Article 85ke of the Act on VAT.

In this context, we want to point out the latest decision-making activity of the Supreme Court of the Slovak Republic after the adoption of the amendments to the Act on VAT (judgment in case Ref. No. 4Sžfk/51/2018 of 10 September 2020, judgment in case Ref. No. 4Sžfk/60/2019 of 6 October 2020, judgment in case Ref. No. 4Sžfk/61/2019 of 6 October 2020, judgment in case Ref. No. 3Sžfk/41/2017 of 27 February 2019), which responded to the Order of the Court of Justice of the European Union in case C-120/15 Kovozber of 21 October 2015. In the absence of relevant legislation, it allows to apply the provision of Article 79a of the Act on VAT is also to tax audits completed by 31 December 2016, as the order of the Court of Justice of the European Union in case C-120/15 Kovozber takes precedence over the national regulation of the provision of Article 85ke of the Act No. 279/2016 Coll., therefore the tax audits completed by 31 December 2016 cannot be excluded from the application of the provision of Article 85ke.

As the tax audit of many of the taxable entities concerned was completed before 31 December 2016, there is no specific legislation in national law to compensate for this economic disadvantage. Administrative courts are also not entitled, in the absence of legislation, to determine in a binding order the appropriate amount of interest which the tax authorities should award to those taxable persons, since they have no legislative power in the field of substantive public law. However, the opinion of the Supreme Court of the Slovak Republic is that the tax administration can no longer maintain the present passive attitude to this matter and the problem of compensation for VAT refund retained during tax audit for the period up to 31 December 2016 will be solved by legislation, possibly by analogous application of the provisions of Article 79a of the Act on VAT, or by application of the legal regulation of general default interest (Article 517(2) of the Act No. 40/1964 Coll. Civil Code as amended, Article 3 of Regulation of the Government of the Slovak Republic No. 87/1995 Coll.).[12]

The Supreme Court, as the court of cassation appeal, (in judgment in case Ref. No. 6Sžfk/59/2018 of 14 November 2019) sees in this case the risk of a possible "cycle of the case," when the tax administrator and the Financial Directorate of the Slovak Republic point to the legal regulation of Article 85ke of the Act on VAT and do not respect the order of the Court of Justice of the European Union in case C-120/15

[12] Case Ref. No. 4Sžfk/51/2018 (the Supreme Court of the SR, 10 September 2020).

 DOI: 10.7206/kp.2080-1084.737

Kovozber, which has the application priority in the case in question. It is indisputable – and the usual judicial practice suggests – that the Financial Directorate of the Slovak Republic or the tax administrator do not respect this procedure and do not apply the order of the Court of Justice of the European Union in case C-120/15 Kovozber (according to the principle of primacy of European Union law), as the order in case C-120/15 Kovozber takes precedence over the national regulation of the provision of Article 85ke of the Act No. 279/2016 Coll. This means that if national legislation fails to comply with European Union law in a persistent manner, as shown in particular in the order of the Court of Justice of the European Union in case C-120/15 Kovozber, the Supreme Court, as the court of cassation appeal, in proceedings to review the legality of tax authorities' decisions not to award interest on VAT refund, has the right to invalidate (annul) decisions issued by tax authorities[13].

The problem for the tax administrator and the Financial Directorate of the Slovak Republic is therefore caused by imperfect legislation relating to cases in which the tax audit within the time limit for payment of VAT refund according to Article 79(1), (2) or (5) was completed by 31 December 2016 (inclusive). The role or duty is now up to the legislator, because these cases cannot be ignored with reference to the judicial decisions of the Court of Justice of the European Union (see the judgments of the Supreme Court of the Slovak Republic in cases Ref. No. 1Sžfk/75/2017 of 27 June 2019 and Ref. No. 1Sžfk/24/2018 of 30 July 2019, in which the application of the provision of Article 79a of the Act on VAT was adopted).

Whereas, as mentioned above, in the case of compensation for VAT refund retained during tax audit, this is a matter intended to compensate for the retention of entrepreneur's money, which is in itself a serious interference with the economic life of a business entity. We do not question the validity of tax audit as a legitimate tool of the state, but, in our opinion, the rules laid down by the legislator in this issue are insufficient.

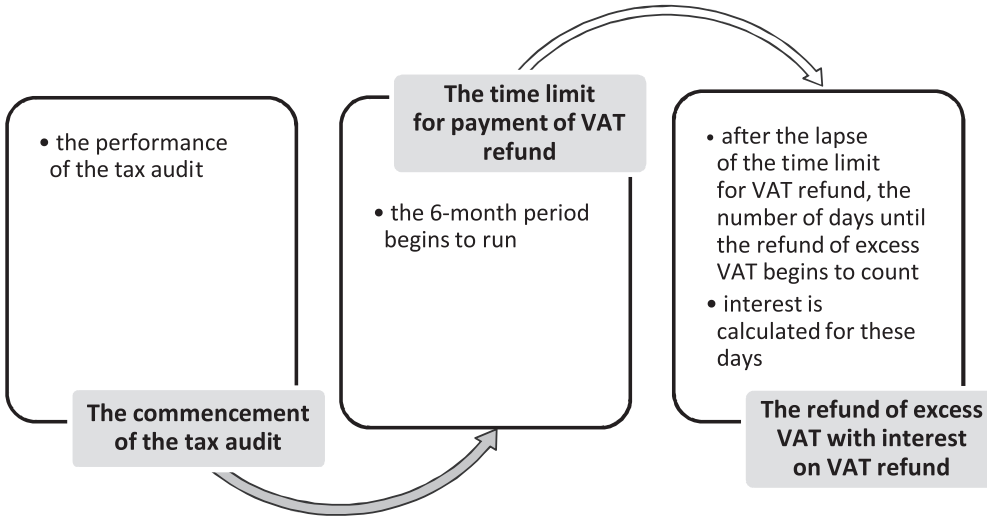
The amount of interest on VAT refund and its proportionality in the context of the judicial decisions of the Court of Justice of the European Union and national law

According to Article 79a(2) of the amended Act on VAT, the interest on VAT refund is calculated on the amount of VAT refund for each day starting from the lapse of

[13] Case Ref. No. 6Sžfk/59/2018 (the Supreme Court of the SR, 14 November 2019) .
Case Ref. No. 4Sžfk/60/2019 (the Supreme Court of the SR, 6 October 2020).
Case Ref. No. 4Sžfk/61/2019 (the Supreme Court of the SR, 6 October 2020).

the 6-month period until the day following after the lapse of the time limit for the VAT refund according to Article 79(1), (2) or (5) until the VAT refund payment date (inclusive), as presented in Figure 1. The Act on VAT also stipulates the interest rate. This interest rate is equal to double the basic interest rate of the ECB valid on the first day of the calendar year for which the interest is charged. If the double the basic interest rate of the ECB is below than 1.5%, the legislator provided that an annual interest rate of 1.5% would be used to calculate the interest on VAT refund. The guarantee of the minimum interest rate ensures at least interest in the stated amount for the taxable entity.

Figure 1. Financial compensation for VAT refund retained during tax audit, the so-called "interest on VAT refund"



Source: author's own compilation based on the principles established by the Financial Directorate of the Slovak Republic.

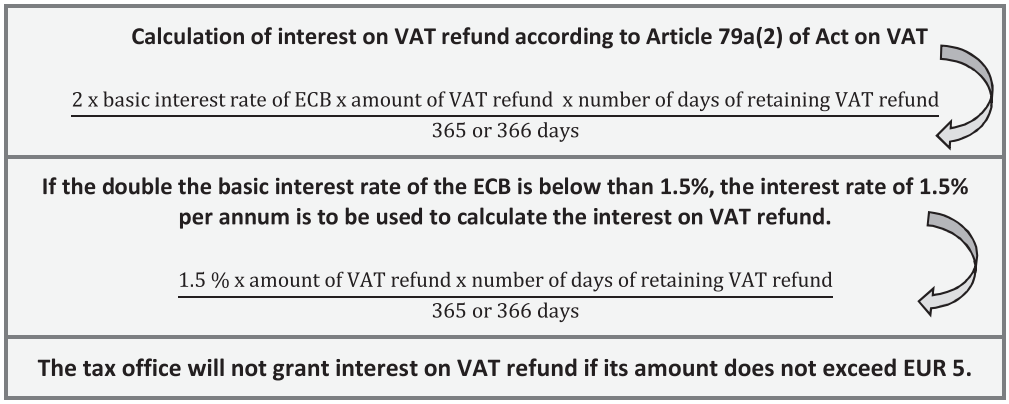
In the following part of the paper, we will demonstrate the calculation of interest on VAT refund in a specific case. To do this, we need to know the facts on which we will base the calculation. The award of interest on VAT refund is calculated according to Article 79a(2) of Act on VAT, as amended, as presented in Figure 2.

According to the law, the VAT payer is entitled to receiving an interest on VAT refund in the amount equal to double the basic interest rate of the ECB valid on the first day of the calendar year for which the interest is charged. In case that double the basic interest rate is below 1.5%, the interest on VAT refund is calculated using an annual interest rate of 1.5%. The interest on VAT refund is to be calculated on

 DOI: 10.7206/kp.2080-1084.737

the amount of VAT refund for each day starting from the lapse of the 6-month period until the day following after the lapse of the time limit for the VAT refund according to Article 79(1), (2) or (5) until the VAT refund payment date (inclusive).

Figure 2. Calculation of interest on VAT refund according to Article 79a(2) of Act on VAT



Source: author's own compilation based on the principles established by the Financial Directorate of the Slovak Republic.

In our specific case, the VAT refund retained during the tax audit was EUR 129,944.60 in the first case (case No. 1) and EUR 243,915.49 in the second case (case No. 2). The starting date of entitlement to interest on VAT refund for the tax period February 2006 is the day starting from the lapse of the 6-month period until the day following after the lapse of the time limit for the VAT refund – 12 November 2006. The starting date of entitlement to interest on VAT refund for the tax period July 2005 is the day starting from the lapse of the 6-month period until the day following after the lapse of the time limit for the VAT refund – 20 April 2006. We will calculate the interest on VAT refund using some data that serve as input for calculation (Table 2).

Given that the double the basic interest rate of the ECB valid on the first day of the calendar years 2014 and 2015 is below 1.5%, an annual interest rate of 1.5% shall be used to calculate the interest on VAT refund for years 2014 and 2015. Subsequently, the calculation of interest on VAT refund is carried out in Table 3 for both cases (case No. 1, case No. 2).

Table 2. Data for calculation of interest on VAT refund in specific case

	Case No. 1	Case No. 2
VAT refund retained	EUR 129,944.60	EUR 243,915.49
Starting day of entitlement to interest	12 November 2006	20 April 2006
Date of the VAT refund	14 September 2015	14 September 2015
Number of days of retaining VAT refund	3228 days	3434 days
Basic interest rate of the ECB		
1 January 2006	2.25 %	
1 January 2007	3.50 %	
1 January 2008	4.00 %	
1 January 2009	2.50 %	
1 January 2010	1.00 %	
1 January 2011	1.00 %	
1 January 2012	1.00 %	
1 January 2013	0.75 %	
1 January 2014	0.25 %	
1 January 2015	0.05 %	

Source: authors' own calculations.

Table 3. Calculation of interest on VAT refund in specific case

Calculation of interest on VAT refund				
Year	Case No. 1		Case No. 2	
	Calculation	Interest in EUR	Calculation	Interest in EUR
2006	2 x 2.25 % x 129,944.60 x 49/365	785.008	2 x 2.25 % x 243,915.49 x 255/365	7,668.302
2007	2 x 3.50 % x 129,944.60 x 365/365	9,096.122	2 x 3.50 % x 243,915.49 x 365/365	17,074.084
2008	2 x 4.00 % x 129,944.60 x 366/366	10,395.568	2 x 4.00 % x 243,915.49 x 366/366	19,513.239
2009	2 x 2.50 % x 129,944.60 x 365/365	6,497.230	2 x 2.50 % x 243,915.49 x 365/365	12,195.775
2010	2 x 1.00 % x 129,944.60 x 365/365	2,598.892	2 x 1.00 % x 243,915.49 x 365/365	4,878.310
2011	2 x 1.00 % x 129,944.60 x 365/365	2,598.892	2 x 1.00 % x 243,915.49 x 365/365	4,878.310
2012	2 x 1.00 % x 129,944.60 x 366/366	2,598.892	2 x 1.00 % x 243,915.49 x 366/366	4,878.310

 DOI: 10.7206/kp.2080-1084.737

2013	2 x 0.75 % x 129,944.60 x 365/365	1,949.169	2 x 0.75 % x 243,915.49 x 365/365	3,658.732
2014	1.50 % x 129,944.60 x 365/365	1,949.169	1.50 % x 243,915.49 x 365/365	3,658.732
2015	1.50 % x 129,944.60 x 257/365	1,372.429	1.50 % x 243,915.49 x 257/365	2,576.149
Total	**–**	**39,841.371**	**–**	**80,979.943**

Source: authors' own calculations.

According to Article 161 of the Tax Procedure Code (unless otherwise provided for by this Act or a special regulation) tax, tax advance, interest on late payment, penalty, and interest are rounded down to tenths of euro cent. The interest on VAT refund after rounding in case No. 1 is EUR 39,841.30 and in case No. 2, it is EUR 80,979.90.

In this context, the minimum amount of interest on VAT refund is disputable, as it can be debated whether the amount of compensation thus determined is sufficient compensation for the funds retained, compared to the amount of financial compensation the taxable entity is required to pay in case of default to the tax administrator.

It should be emphasised that the conditions under which default interest on VAT is to be paid – as well as its amount – must respect the principles of equivalence and effectiveness, and must therefore not be less favourable than those for similar claims based on the provisions of national law or not be set in such way as to practically make it impossible the exercise of the rights granted by the legal order of the European Union or made this exercise excessively difficult (see, to this effect, order in case C-654/13 Delphi Hungary Autóalkatrész Gyártó, EU:C:2014:2127, paragraph 35 and the judicial decisions cited).

Regarding the method of calculating the interest rate, in the opinion of the Supreme Court of the Slovak Republic,[14] it is not possible to use the analogy of legis for the given case and to determine the amount of interest in connection with the provision of Article 79(3) of the Tax Procedure Code, because the interest adjusted in this way is a sanction for late refund of the tax overpayment, thus for breach of an obligation imposed by law. On the other hand, retention of funds for the period necessary to perform a tax audit, also based on the judicial decisions of the Court of Justice of the European Union, is justified and legitimate as it serves to verify the facts necessary for the correct determination of the tax and to prevent and detect tax fraud. However, the compensation in the form of interest on the funds retained for the duration of the tax audit cannot act as a sanction for the tax authority, but must respect the principle of fiscal neutrality. According to the judicial practice

[14] Case Ref. No. 4Sžfk/60/2019 (the Supreme Court of the SR, 6 October 2020).

of the Court of Justice of the European Union, a taxable entity must not be economically disadvantaged by the performance of tax audit. Similarly, the performance of tax audit linked to the retention of the applied excess deduction of VAT (while maintaining tax neutrality) must not grant an economic advantage either. The Supreme Court of the Slovak Republic concluded that the award of interest at the rate of 10% per annum on the amount retained from the lapse of the statutory period for repayment of the excess deduction until its return to the taxable entity, appears to be a disproportionate advantage for the audited taxable entity compared to other taxable entities not subject to tax audit. An interest rate on the funds retained at a rate of 10% per annum would mean such an economic appreciation that it would not be possible to achieve on the banking market at that time. From this point of view, the Supreme Court of the Slovak Republic seems to argue that the legal regulation of the amount of interest on VAT refund retained during the tax audit, effective from 1 January 2017 (an interest rate at least 1.5% per annum), corresponds to the reality of the banking market and in particular reflects the principle of neutrality of VAT.

The Supreme Court, as the court of cassation appeal, also does not agree with the proposals from tax entities to use a triple of the basic interest rate of the ECB valid on the last day of the time limit within which the amount of the tax overpayment was supposed to be refunded. If the triple of the basic interest rate of the ECB is lower than 10%, the interest rate of 10% per annum shall be used for the calculation of interest. The amendment to the Act No. 222/2004 Coll. on Value Added Tax effective from 1 January 2017 in Article 79a regulates "compensation for VAT refund retained during tax audit," and grants the VAT payer the right to interest on VAT refund (at least 1.5% per annum of the amount of refunded excess VAT for each day) starting from the lapse of the 6-month period until the day following after the lapse of the time limit for the VAT refund according to Article 79(1), (2) or (5). The compensation, which belongs to the taxpayer for the period of legal verification of the data stated in his tax return, must be distinguished from interest for late refund of excess VAT and excise duty pursuant to Article 79(3) of the Tax Procedure Code, according to which the applicant calculated the interest (see the judgment of the Supreme Court of the Slovak Republic in case Ref. No. 4Sžfk/61/2019 of 6 October 2020).

The latest judicial decisions of the Court of Justice of the European Union also prove that the controversy over the adequacy of interest on VAT refund is not settled in national law.[15] The Court of Justice of the European Union has dealt with

[15] Case C – 13/18 *Sole-Mizo Zrt*. and C – 126/18 *Dalmandi Mezögazdasági Zrt*. EU:C:2019:708.

 DOI: 10.7206/kp.2080-1084.737

a case of calculating interest on an excess of deductible VAT withheld by Hungary as a Member State of the Union beyond a reasonable period of time in breach of European Union law. The Court of Justice of the European Union addressed here questions of substantive and procedural conditions under which an excess VAT deduction is to be refunded to the taxable person. The case concerned the refund of excess VAT which could not be refunded within a reasonable period of time because of a condition laid down by the Hungarian legislation, which was subsequently declared contrary to European Union law.

In that regard, the Court of Justice of the European Union has held that:

- it is for the internal legal order of each Member State to lay down the conditions in which such interest must be paid, particularly the rate of that interest and method of its calculation,
- these conditions shall not be less favourable than those applicable to similar claims which arising under national law,
- the calculation of interest on VAT refund must be determined in such a way that the taxable person is not deprived of an adequate compensation for the loss the taxable person has suffered as a result of its inability to dispose of the retained funds,
- this interest is intended to compensate for financial losses and economic burdens which the taxable person arose as a result of the unavailability of the retained funds – if the taxable person had to borrow these funds from a credit institution in order to cover the lack of capital, the taxable person would have to pay a higher interest rate than the basic interest rate of the national central bank, which is available only to credit institutions,
- interest on VAT refund, withheld by a Member State in violation of European Union law beyond a reasonable time, calculated by applying the basic interest rate of the national central bank, is not considered adequate, if:
  - this rate is lower than the rate that a taxable person who is not a credit institution would have to pay for borrowing the same amount, and
  - such interest is not applied, the purpose of which is to compensate the taxable person for the damage that he arose from a decrease in monetary value that occurred as a result of the time that has passed since of the tax period for which the excess deduction was reported, until the actual payment of this interest.

As regards the period to which the interest relates, the Court of Justice of the European Union states that the interest on VAT refund is to be calculated from the end of the tax period in question for which the excess deduction of VAT was recognised

in the tax return until the actual payment of that interest, irrespective of when the amount of interest was awarded.

The Court of Justice of the European Union has also stated that European Union law does not prevent Member States from setting a limitation period for the application for payment of interest on VAT refund on account of the application of a national provision which was determined to be in conflict with the European Union law.

Conclusion

In accordance with the latest conclusions of the Court of Justice of the European Union on the necessity of adequate compensation for the financial loss from retained VAT refund at the level of interest on VAT refund, the position of tax subjects in disputes with the financial administration in case of non-granting of adequate interest may be strengthened.

The tax audit of many of the taxable entities concerned was completed before 31 December 2016 and there is no specific legislation in national law to compensate for this economic disadvantage. Yet, the proposal de lege ferenda is to solve the problem of compensation for VAT refund retained during tax audit for the period up to 31 December 2016 in the conditions of the Slovak Republic legislatively by analogous application of the provisions of Article 79a of the Act on VAT, or by application of the legal regulation of general default interest (Article 517(2) of the Act No. 40/1964 Coll. Civil Code as amended, Article 3 of Regulation of the Government of the Slovak Republic No. 87/1995 Coll.).

In accordance with the Slovak Act on VAT, if a tax office initiates a tax audit within the time limit for refund of the excess deduction and the VAT refund is not paid within 6-month period from the last day of the time limit for refund of the excess deduction, the taxpayer shall be entitled to compensation for the retained VAT refund at the level of interest on VAT refund. The double the basic interest rate of the ECB shall be used to calculate interest. If double the basic interest rate is below 1.5%, the interest on VAT refund is calculated using annual interest rate of 1.5%. From this point of view, the Supreme Court of the Slovak Republic considers the legal regulation of the amount of interest on VAT refund retained during the tax audit, effective from 1 January 2017 (the interest rate at least 1.5% per annum) as corresponding to the reality of the banking market and reflecting the principle of neutrality of VAT. The interest is calculated on the amount of VAT refund for each day starting from the lapse of the 6-month period until the day following

 DOI: 10.7206/kp.2080-1084.737

after the lapse of the time limit for the VAT refund or until the VAT refund payment date (inclusive).

The conclusions of the Court of Justice of the European Union regarding the need for adequate compensation for financial loss at the level of interest when borrowing the amount in question from a credit institution may also contribute to opening a discussion about the level of interest rate in our legislation. It is also questionable whether the 6-month period after the expiry of the period for refund of excess VAT, when the interest on VAT refund is not granted in the Slovak Republic, is not contrary to the principles adopted by the Court of Justice of the European Union in its judgment of 23 April 2020 in case C-13/18 Sole-Mizo Zrt. and C-126/18 Dalmandi Mez-gazdasági Zrt. This rightly raises the question of whether this current Slovak legislation is in accordance with European Union law, especially with the principles of proportionality, fiscal neutrality, equivalence, and efficiency. We have to state that, based on what we have reviewed, we have found that in certain aspects, these principles do not apply or are fulfilled insufficiently (for example, cases in which the tax audit within the time limit for payment of VAT refund according to Article 79(1), (2) or (5) was completed by 31 December 2016 (inclusive); the 6-month period after the expiry of the period for refund of excess VAT, when interest on VAT refund is not granted in the Slovak Republic and so on).

References

Act No. 297/2016 Coll., amending Act No. 222/2004 Coll. on Value Added Tax, as amended, and amending Act No. 331/2011 Coll., amending and supplementing Act No. 563/2009 Coll. on Tax Administration (Tax Procedure Code) and on Amendments and Supplements to Certain Acts and amending and supplementing Certain Acts, as amended.

Act No. 563/2009 Coll. on Tax Administration (Tax Procedure Code) and on Amendments and Supplements to Certain Acts.

Constitution of the Slovak Republic Act No. 460/1992 Coll. as amended by the constitutional Acts published under No.: 244/1998 Coll., 9/1999 Coll., 90/2001 Coll., 140/2004 Coll., 323/2004 Coll., 463/2005 Coll., 92/2006 Coll., 210/2006 Coll, 100/2010 Coll. and 356/2011 Coll. (effective from 25.10.2011).

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. (Ú.v. EÚ I. 347, 11.12.2006).

Judgment of the Court of Justice of the European Union of 12 May 2011 in case C-107/10 Enel Maritsa Iztok 3 AD contra Direktor 'Obzhalvane i upravlenie na izpalnenieto' NAP. ECLI:EU:C:2011:298.

Order of the Court of Justice of the European Union of 21 October 2015 in case C-120/15 Kovozber, s. r. o. contra the Tax Office Košice. ECLI:EU:C:2015:730.

Judgement of the Court of Justice of the European Union of 24 October 2013 in case C-431/12 Rafinăria Steaua Română. ECLI:EU:C:2013:686, paragraph 23.

Judgement of the Court of Justice of the European Union of 10 July 2008 in case C-25/07 Alicja Sosnowska contra Dyrektor Izby Skarbowej Ošrodek Zamiejscowy w Walbrzychu. ECLI: EU:C:2008:395.

Judgement of the Court of Justice of the European Union of 20 May 2010 in case C-160/09 Ioannis Katsivardas – Nikolaos Tsitsikas OE contra Ipourgos Ikonomikon. ECLI:EU:C:2010:293, paragraph 24.

Order of the Court of Justice of the European Union of 17 July 2014 in case C-654/13 Delphi Hungary Autóalkatrész Gyártó. ECLI:EU:C:2014:2127.

Judgement of the Court of Justice of the European Union of 23 April 2020 in case C-13/18 Sole-Mizo Zrt. and C-126/18 Dalmandi Mez-gazdasági Zrt. ECLI:EU:C:2019:708.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 4Sžfk/60/2019 of 6 October 2020.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 4Sžfk/61/2019 of 6 October 2020.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 4Sžfk/51/2018 of 10 September 2020.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 6Sžfk/59/2018 of 14 November 2019.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 3Sžfk/41/2017 of 27 February 2019.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 5Sžfk/24/2017 of 28 March 2019.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 3Sžfk/4/2019 of 17 April 2019.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 1Sžfk/75/2017 of 27 June 2019.

Judgement of the Supreme Court of the Slovak Republic in case Ref. No. 1Sžfk/24/2018 of 30 July 2019.

Opinion of the Administrative College of the Supreme Court of the Slovak Republic of 30 October 2019, Ref. No. Snj 36/2019 to unify the decision-making activities of the Supreme Court of the Slovak Republic in regard to compensation for VAT refund retained during tax audit, published in the Collection of Judicial Decisions and Opinions of the Supreme Court and Courts of the Slovak Republic 6/2019 under No. 56.

Financial Administration. 2021. Available from: https://www.financnasprava.sk/en/financial-administration.

Judikaty.info. 2021. Available from: https://www.judikaty.info/.

 DOI: 10.7206/kp.2080-1084.737