

ECJ rules on bad debts' VAT refund Significant impact to Greek enterprises

Under Greek VAT Law, as currently in force, it is not possible under any circumstances for an enterprise to receive a refund of the VAT on bad debts. Consequently, such VAT –paid to the Greek State, but not received from their customers- burdens the enterprises as cost.

In this respect, the VAT Directive (article 90 par. 2 of Directive 2006/112/EC) gives to the Member States, in particular in case of total or partial non-payment of the price, the option to derogate from the general obligation they have to refund the VAT, where the price for a certain supply is reduced, returned or not paid.

The Court of Justice of the European Union however, with its recent decision in case C-246/16 (Enzo Di Maura), ruled that this derogation does not mean that Member States have the power to exclude the refund of VAT altogether in case of total or partial non-payment of the price. According to the Court, such prohibition by the Member States would violate fundamental principles of EU Law.

Applying the reasoning of the Court to the Greek practice, it arises that the prohibition by Greek VAT Law of the refund of VAT on bad debts is contrary to EU Law. Accordingly, apart from the necessity for Greek VAT Law to change, the above Court decision provides the legal ground for Greek enterprises to judicially claim back the VAT on bad debts they have been burdened with.

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