

Real Estate Industry News

Request for preliminary ruling lodged by Romania to the Court of Justice of the European Union – case C-183/14

Background

On March 11, 2015 took place the hearing for the C-183/14 - Radu Florin Salomie, Nicolae Vasile Oltean vs. Direcția Generală a Finanțelor Publice Cluj case, lodged by Curtea de Apel Cluj to Court of Justice of the European Union.

The case refers to real estate transactions carried out by natural persons who were retroactively qualified as taxable persons.

The interpretation of the tax authorities of the <<economic activity>> concept suffered changes following the clarifications brought in the application norms to Title VI „VAT” of the Romanian Tax Code, starting January 2010. Until this date, the tax authorities considered the supplies of buildings carried out by natural persons as sales falling within the scope of management of their private wealth.

Questions referred

In short, the following questions were referred:

- For the real estate transactions carried out, can the natural person be considered taxable person for VAT purposes?
- Do the general VAT principles preclude a national practice whereby the tax authorities reclassify the transactions as economic activities subject to VAT, calculating the incidental charges retroactively, two years after levying tax on the income from the initial transfer of properties?
- Does the VAT Directive preclude the tax authorities to refuse the VAT deduction right on the goods and services used for taxable transactions only because it was not registered for VAT purposes when the supplies were carried out?
- Does the VAT Directive preclude a national regulation establishing the obligation to pay the VAT that should have been paid to a taxable person registered for VAT with delay, without having the right to reduce the deductible VAT for each month? In this case, can the VAT deduction right be exercised subsequently in the VAT return submitted after the VAT registration, having potential repercussions for calculation of the incidental charges?

Until now, the European Court of Justice did not issue a decision regarding this case.

Practical aspects

The judgement in this case could confirm the right to deduct retroactively the input VAT on acquisitions made by (natural) persons, qualified as taxable persons by the Romanian tax authorities.

The VAT deduction related to the acquisitions carried out before the VAT registration is allowed via the first VAT return submitted after the registration. The confirmation that VAT can be deducted in same period for which VAT is due in respect of the supplies carried out would significantly reduce both the payable VAT, as well as the related late payment interest and penalties.



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