

EU and International TAX COLLECTION NEWS

2023- 2

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EUCJ, 22.11.2017, C-224/16, Aebtri
2017, 93

VAT – Joint and several liability of the recipient of a taxable supply which has exercised the right to deduct VAT knowing that the person liable for payment of that tax would not pay it – Obligation of such a recipient to pay the VAT not paid by the person liable for payment and the default interest due on account of that person's failure to pay the VAT

EUCJ, 20.05.2021, C-4/20, ALTI
2021, 152

Excise duties – Transporter of the goods being unaware that excise duty has become chargeable in respect of those goods

EUCJ, 10.06.2021, C-279/19, WR
2021, 158

VAT – Joint and several liability of the manager of a legal person – Liability for the VAT and for the default interest payable by the legal person - Proportionality

EUCJ, 13.10.2022, C-1/21, MC
2022, 93

NOTIFICATION OF TAX CLAIMS

Taxable person not fulfilling his obligation to inform the Tax Agency about his address change – Obligation of the tax authorities to act with diligence and good faith – Unvalidity of notification by public disclosure if the tax authorities knew or should have known that the debtor could no longer be reached at a former address

Spain, Audiencia nacional – Sala de lo Contencioso Administrativo (National court for administrative matters) 12.03.2015
2016, 7

Personal deposit in the letter box of the debtor – Valid notification – Proof of this notification

Netherlands, Court of Appeal Arnhem-Leeuwarden 15.12.2015
2016, 9

Notification in another State – Order for substituted or deemed service – Condition that service by another means was not successful

Australia, Federal Court, Victoria District Registry 28.08.2015, McManus
2016, 10

Direct notification in another State by the authority requesting recovery assistance – Language of the notification – Effectiveness to be assessed under the legislation of the applicant State, without review by the requested authority

Germany, Federal Tax Court (Bundesfinanzhof), 24.02.2015
2016, 81

Validity – Condition that the addressee is able to know the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining notification of those reasons

EUCJ, 26.04.2018, C-34/17, Donnellan
2018, 118

Service of originating process – Service outside the jurisdiction – Substituted service – Where service in accordance with the Hague Convention estimated to take 3 or 4 months, whether personal service not practicable.

Australia, Federal Court, 16-18.09.2019
2019, 157

Right of defence – Time period for appeal running from a date on which the addressee cannot yet have knowledge of the decision that is notified to him

Belgium, Supreme Court (Cassation), 28.01.2021
2021, 29

PENALTIES

Non-compliance with tax declaration obligations – State successively imposing a tax penalty and a criminal penalty – No violation of the ne bis in idem principle (Article 50 of the Charter of fundamental rights of the EU) in so far as the first penalty is not criminal in nature

EUCJ, 26.02.2013, C-617/10, Åkerberg Fransson,
2014, 43

Administrative penalties with a criminal nature - Ne bis in idem – No second punishment for the same offence – Distinction between offences in the corporate income taxation and the personal income taxation – No violation of Art. 4 of the 7th Protocol

ECHR, 20.05.2014, Pirttimäki v. Finland, 35232/11,
2015, 33

Ne bis in idem – Dual criminal and administrative proceedings – Permitted if sufficiently connected in substance and in time

ECHR, 15.11.2016, A and B v Norway
2017, 125

Ne bis in idem – Violation – Dual criminal and administrative proceedings not sufficiently connected in substance and in time

ECHR, 18.05.2017, Jóhannesson and Others v Iceland
2017, 171

Ne bis in idem - Administrative penalty and criminal penalty for non-payment of VAT – Imposed respectively on a company and on a natural person – No violation

EUCJ, 05.04.2017, C-217/15 and C-350/15, Orsi and Baldetti
2017, 183

Ne bis in idem – Failure to pay VAT due – Administrative penalty and criminal penalty for the same acts – No violation of the Charter of Fundamental Rights of the EU if conditions are fulfilled

EUCJ, 20.03.2018, C-524/15, Menci
2018, 103

Failure to timely pay VAT – Criminal offence only when the amount of the unpaid VAT exceeds a specific threshold – Lower threshold for criminalization of failure to timely pay withholding income tax – No violation of EU law

EUCJ, 02.05.2018, C-574/15, Scialdone
2018, 110

Penalties – Presumption of innocence – Recovery of an administrative penalty before the end of the judicial proceedings – Interest due on the amount of the fine – No violation of human rights

Belgium, Supreme Court (Cassation), 18.01.2018
2018, 117

Joint and several liability for taxes due – No civil claim and no criminal charge in the meaning of Article 6 ECHR – No need for a judicial decision in accordance with that provision

ECHR, 23.01.2018, 52961/09, Homan and Others v Belgium
2019, 170

Proportionality – Freedom to provide services – Article 56 TFEU – Restrictions – Tax on advertising activities – Obligations relating to registration with a tax authority – Principle of non-discrimination

EUCJ, 03.03.2020, C-482/18, Google Ireland
2021, 145

Ne bis in idem (Right not to be tried or punished twice) – Minor-offence penalty – Excise duties increased one hundred times in tax proceedings – Two sets of proceedings not sufficiently linked in substance to form a coherent whole

ECHR, 31.08.2021, Milošević v. Croatia, 12022/16
2021, 177

Ne bis in idem (Right not to be tried or punished twice) – Duplication of proceedings leading to imposition of tax surcharges and conviction of major tax offences, insufficiently connected in substance and time

ECHR, 31.08.2021, Bragi Guðmundur Kristjánsson v. Iceland, 12951/18
2021, 184

Penalties not precluded by the seizure and confiscation of goods unlawfully introduced in the customs territory of the EU – Extinguishment of the customs debt not leading to the extinguishment of the VAT and excise duty debts

EUCJ, 07.04.2022, C-489/20, UB
2022, 78

Incorrect customs declaration – Mandatory fine equivalent to the value of the imported goods – No possibility for a court to assess the individual situation – Disproportionate interference with the property right

ECHR, 13.01.2022, Krayeva v. Ukraine, 72858/13
2022, 111

PRECAUTIONARY MEASURES

Objection by a third party claiming a transfer of rights on the relevant assets – No proof of a valid transfer of rights

South-Africa, North Gauteng High Court, 31.01.2014, Krok and Jucool
2015, 94

Freezing of assets – Good arguable case – Danger that prospective judgment will be unsatisfied through particular activities by the debtor – Balance of convenience

Australia, Federal Court, 17.07.2018
2018, 128

VAT – Dispute whether the VAT had to be paid by the taxable person himself or by his customers, under the reverse charge rule – Precautionary garnishments with regard to clients of the taxable person – Payment of the VAT by the customers not taken into account because the taxable person did not prove that payment

France, Supreme Court (Cassation), 06.09.2018
2019, 155

Application for freezing orders against tax debtor and third party following issue of tax assessments – Where good arguable case – Whether danger prospective judgement will be wholly or partly unsatisfied because of prospect of removal of assets from Australia or dissipation of assets – Balance of convenience and interests of justice

Australia, Federal Court, 16-18.09.2019
2019, 157

Application for freezing orders – Whether applicant has a good arguable case – Whether danger that a prospective judgement might not be satisfied – Balance of convenience

Australia, Federal Court, 27.11.2020
2021, 25

RIGHT OF DEFENCE

Post-clearance recovery of customs duties on imports
– Recovery of the customs debt following the adoption of the decision on the customs debt – Person concerned not heard by the customs authorities before the adoption of that decision but only during the subsequent objection stage – infringement of the right of defence if no possibility to obtain suspension of the implementation until the possible amendment
EUCJ 03.07.2014, C-129 & 130/13, Kamino and Datema, 2014, 51

Seizure of vehicles – No obligation for the tax authorities to check whether the tax debtor owns the seized vehicle – No concrete and effective appeal for the lessor of the vehicle – Violation of the right of access to justice
Belgium, Constitutional Court, 04.10.2018 2018, 135

Appeal against VAT assessments – obligation to first pay or deposit the tax – No such condition for appealing other tax assessments – No violation of the EU law principle of equivalence
United Kingdom, Supreme Court, 26.07.2018 2018, 138