

8th & 13th Directive VAT reclaims

[UKFTT 134 Areva T&D Protection et Controle and others](#)

These joined cases are four appeals against the refusal to pay Eighth and Thirteenth Directive claims. All claims have in common the fact that they failed to include all the required documentation. They were returned to the claimant but by this time they were out of time to resubmit. The appeals were centred upon the argument that HMRC's procedures resulted in discriminatory treatment of non UK businesses compared to UK established taxable persons and were therefore incompatible with EC law and legislation. HMRC disputed this, stating that whilst right to obtain a refund by non established persons is the counterpart of the rights under Article 168 of the VAT Directive, the rights are set down under different regimes of different Directives. HMRC added that the checks for non EU businesses are more limited and that the Thirteenth Directive states that refunds should not be granted under conditions more favourable than those established within the Community.

Reference is made in the case to the FACEVET scheme which was introduced from 1 January 2006. Under this procedure the Overseas Repayment Unit made arrangements to check the completeness of claims as soon as the claims were received. Prior to the introduction of the scheme, claims with procedural errors could have taken up to twelve months to be refused. The scheme led to the reduction of the average time to effect refunds to claimants to six months. HMRC argued that FACEVET had not imposed a new and more onerous requirement on overseas businesses; instead it had been introduced to ensure that claims for repayment that did not comply with the requirements of the respective Directives were identified as quickly as possible.

In the Eighth Directive cases the claims were rejected because of the failure to submit a certificate of status. The Thirteenth Directive claims on appeal were refused on differing grounds, one because the invoices did not show amounts in Sterling and the other because of a failure to include a Certificate of Business Status. The Tribunal concluded that there were different rules governing domestic and non domestic applications for refunds. However, this was because the two situations were different and the rules are expressly covered by their own Directives. Therefore, the principles of fiscal neutrality and non-discrimination are not infringed. This is particularly relevant to Thirteenth Directive claims where HMRC have more limited checks to confirm the status of the claimant. With regards the invoices with no VAT amounts in Sterling, these were found not to be discriminatory as the same rules apply to UK taxable businesses. The Tribunal therefore upheld HMRC's decision to refuse the claims as out of time.

Comment

4 Eyes Ltd handles VAT reclaims for EU and non EU businesses throughout the Member States.

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