

## Greece: VAT Bad Debt Relief New CJEU decision

The Court of Justice of the European Union (CJEU) in its latest decision C-314/22, Consortium Remy Group confirms once again that the reduction of the taxable amount in the case of total or partial non-payment of the consideration (bad debts) is a fundamental right of taxpayers/businesses based on the provisions of Council Directive 2006/112/EC ("EU VAT Directive") and cannot be abolished altogether. The decision, which was issued in the context of a preliminary ruling by the Supreme Administrative Court of Bulgaria, is in line with the previous judgments of the CJEU on the matter, with its first cornerstone decision issued back in 2017 in case C-246/16 (Enzo Di Maura) and its latest order issued back in 2021 in case C- 507/20 (FGSZ).

The CJEU in its new decision provides further clarifications with regards to the exercise of the VAT bad debts relief. In particular, the CJEU ruled that:

- ▶ Member States are permitted to impose a limitation period for taxpayers to apply for a VAT refund resulting from a reduction in the taxable amount of VAT in the event of total or partial non-payment. However, such limitation period must begin to run from the date in which a taxable person was able, without showing a lack of sufficient diligence, to assert its right to a reduction.
- ▶ The CJEU adopting in full the position of Attorney General Kokkot, reaffirmed that it is not required, for the exercise of the right to reduce the taxable amount by a taxable person, a completion of unsuccessful court proceedings or the initiation or conclusion of insolvency proceedings against the recipient of the supply.

- ▶ On the contrary, the principle of neutrality prohibits a disproportionately long pre-financing of the VAT by the taxable person (supplier), provided that the supplier has taken all reasonable steps to discharge its function as tax collector for the state. This simply requires in principle an unsuccessful request for payment by the supplier to the recipient of the supply.
- ▶ The starting of a limitation period imposed by a Member State for the exercise of the right to reduce the taxable amount shall not begin to run from the date the supply was made, or the date when the invoice was issued, but shall begin to run from the date on which it is highly probable, almost certain that the debt has become irrecoverable.
- ▶ In addition, provided that no specific national provisions exist, it is contrary to the EU VAT Directive a requirement on the part of the tax authority which renders the reduction in the taxable amount of VAT, in the event of total or partial non-payment of an invoice issued by a taxable person, subject to the condition that that taxable person corrects the initial invoice beforehand and that it communicates beforehand to its debtor its intention to cancel the VAT, where it is impossible for that taxable person to make such an adjustment in due time, for reasons beyond its control.
- ▶ Finally, the right to reduce the taxable amount of VAT in the event of total or partial non-payment of an invoice issued by a taxable person entails that a right exists for a refund of the VAT paid by that taxable person plus interest for late payment.
- ▶ In the absence of rules in the legislation of a Member State for applying any interest due, the starting point for the calculation of that interest is the date from which the taxable person exercises its right to that reduction in the VAT return of the relevant tax period.

**In view of the above:**

- ▶ It is clear that the limitation applied in practice by the Greek State following decision 355/2019 of the Hellenic Supreme Administrative Court (ΣΤΕ), namely that the right of VAT refund for bad debts exists only in the cases of commercial insolvency of the debtor/recipient of supply, is contrary to European Union law.
- ▶ Therefore, it is now imperative for the Greek VAT legislation to be amended, so as to enable the refund of VAT on bad debts in all circumstances where the taxable person invokes and proves that it is certain or reasonably probable that the debt will not be paid in cases beyond commercial insolvency, such as in situations of long-term frozen unpaid invoices, debt relief agreements etc.

## EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

### About EY's Indirect Tax services

Your business will only succeed if you build it on a strong foundation and grow it in a sustainable way. At EY, we believe that managing your tax obligations responsibly and proactively can make a critical difference. Our 50,000 talented tax professionals, in more than 150 countries, give you technical knowledge, business experience, consistency and an unwavering commitment to quality service – wherever you are and whatever tax services you need.

For more information, please contact:

#### **Stephanos Mitsios**

Head of Tax, EY Greece  
Tel: +30 210 2886 363  
[stefanos.mitsios@gr.ey.com](mailto:stefanos.mitsios@gr.ey.com)

#### **Tassos Anastasiadis**

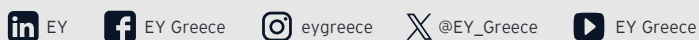
Partner, Indirect Tax  
Tel: +30 210 2886 592  
[tassos.anastasiadis@gr.ey.com](mailto:tassos.anastasiadis@gr.ey.com)

#### **Nikoletta Merkouri**

Partner, Indirect Tax – Global Trade  
Tel: +30 210 2886 572  
[nikoleta.merkouri@gr.ey.com](mailto:nikoleta.merkouri@gr.ey.com)

© 2024  
All rights reserved

[ey.com](https://ey.com)



This document contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global EY organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

Legal Name: ERNST AND YOUNG Single Member Societe Anonyme for the Provision of Advisory Services  
Distinctive title: ERNST & YOUNG BUSINESS ADVISORY SOLUTIONS  
Legal form: Societe Anonyme  
Registered seat: Chimarras 8B, Maroussi, 15125  
General Commercial Registry No: 001576101000