



# Compensation for late refund of VAT

**Richard Jahoda**

**Indirect Taxes Practice Group**

**Warsaw, 22 April 2016**



Grinex Czech Republic

## Legislation:

- ❖ Article 18/4 – SIXTH VAT DIRECTIVE 77/388/EEC
- ❖ Article 183 - VAT DIRECTIVE 2006/112/EC



### Rules governing the exercise of the right to deduct

Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period. However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.



Grinex Czech Republic

## Legislation:

- ❖ Article 27/1 – 6<sup>TH</sup> VAT DIRECTIVE 77/388/EEC
- ❖ Article 395/1 - VAT DIRECTIVE 2006/112/EC



### Authorisations; simplification or to prevent tax evasion or avoidance

1. The Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption.



Grinex Czech Republic

## Legislation:

### ❖ CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION Article 17



#### Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.



Grinex Czech Republic



## Judicature ECJ:

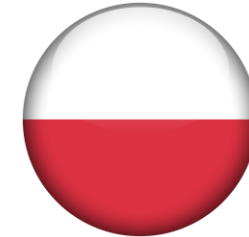
- ❖ **C-286/94 Molenheide (Belgium)**  
**18 December 1997**

“the principle of proportionality is applicable to national measures which, like those at issue in the main proceedings, are adopted by a Member State in the exercise of its powers relating to VAT, since, if those measures go further than necessary in order to attain their objective, they would undermine the principles of the common system of VAT and in particular the rules governing deductions which constitute an essential component of that system.”

“Moreover, in the event of the retention being lifted, calculation of the interest payable by the Treasury which did not take as its starting point the date on which the VAT balance in question would have had to be repaid in the normal course of events would be contrary to the principle of proportionality. “



Grinex Czech Republic



## Judicature ECJ:

❖ **C-25/07 Sosnowska (Poland)**  
**10 July 2008**  
**AG Mazák Opinion 26 February 2008**

1. Article 18(4) of the Sixth Council Directive : uniform basis of assessment and the principle of proportionality preclude national legislation, such as that at issue in the main proceedings, which, in order to allow investigations required to prevent tax evasion and avoidance, extends from 60 to 180 days, as from the date of submission of the taxable person's VAT return, the period available to the national tax office for repayment of excess VAT to a category of taxable persons, unless those persons lodge a security deposit to a value of PLN 250 000.
2. The rules laid down in national measures like those at issue in the main proceedings cannot be considered to constitute special measures to prevent certain types of tax evasion and avoidance within the meaning of Article 27(1) of Directive 77/388 where the formal procedure which is expressly provided for in Article 27 of Directive 77/388 has not been followed.





## Judicature ECJ:

❖ **C-107/10 Enel Maritsa Iztok (Bulgaria)**  
**12 May 2011**



1. Article 183 of the Directive in conjunction with the principle of the protection of legitimate expectations, is to be interpreted as precluding national legislation which provides, with retrospective effect, for the extension of the period within which excess value added tax is to be refunded, in so far as that legislation deprives the taxable person of the right enjoyed before the entry into force of the legislation to obtain default interest on the sum to be refunded.
2. Article 183 of the Directive in the light of the principle of fiscal neutrality, is to be interpreted as precluding national legislation under which the normal period for refunding excess valued added tax, at the expiry of which default interest is payable on the sum to be refunded, is extended where a tax investigation is instigated, the effect of the extension being that such interest is payable only from the date on which the investigation is completed, .....
3. Article 183 of the Directive is to be interpreted as not precluding the refund of excess valued added tax by way of set-off.



Grinex Czech Republic

## Judicature:

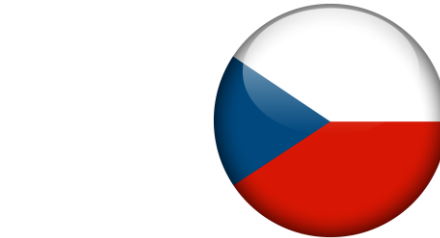
❖ C-431/12 Rafinăria Steaua (Romania)  
24 October 2013





❖ C-654/13 Delphi Hungary  
Order of 17 July 2014







## Czech Story:

- ❖ VAT system introduced 1993
- ❖ VAT filing date – 25<sup>th</sup> day of the next month
- ❖ Excess refund due 30 days after VAT filing date, ie. 55 days after the end of the VAT period
- ❖ January  25 February  25 March
- ❖ Any control from Tax Office extends due date indefinitely
- ❖ 2 modes of controlling activity: a/ doubt proving or b/ tax inspection
- ❖ No specific rules regulating compensation for late payment of the excess refund
- ❖ CHANGE: Judgment 7 Aps 3/2013-34 of the Supreme Administrative Court of 25 September 2014, “Lex KORDARNA”



	Supreme Court Judgment Lex Kordarna	VAT Code Amendment
Compensation interest title starts:	3 months after the end of VAT period	5 months after the start of “proving of doubts”
Compensation interest rate	Repo rate of Czech National Bank + <b>14%</b> <b>(14.05%)</b>	Repo rate of Czech National Bank + <b>1%</b> <b>(1.05%)</b>
Limitation of compensation	No	Not applicable for tax control and for proceedings before the effective date of the amendment



## Latest Decision of ECJ:



❖ C-120/15 Kvosber (Slovakia)  
Reasoned order of 21 October 2015

Confirmation of the prior ECJ judicature re. the topic.

1. Member State`s conditions for the refund of excess VAT cannot undermine the principle of **fiscal neutrality of the VAT system** by making the taxable person bear the burden of the VAT in whole or in part, which implies that the refund is made within a reasonable period of time
2. The calculation of the interest payable by the Treasury which does not take as its **starting point the date on which the excess VAT would have had to be repaid in the normal course of events** in accordance with the VAT Directive would be contrary, in principle, to the requirements of Article 183 of that directive.
3. Member States are entitled to set the conditions for deferment of the refund of the excess VAT in particular cases as the measures for combating tax evasion, however the compensation in the form of default interest must be paid to taxpayer.



Grinex Czech Republic

## Questions regarding other EU Member States:

1. When is the excess VAT refund due in your jurisdiction in the normal course of events?
2. Does exist any events which can extend the period for the repayment of the excess VAT?
3. Are the taxpayers entitled to the compensation for the late refund of the excess VAT?



Grinex Czech Republic

Thank you for your attention!

Richard Jahoda

[richard.jahoda@grinex.cz](mailto:richard.jahoda@grinex.cz)

Tel: +420 602 208 189

[www.grinex.cz](http://www.grinex.cz)

