



Reports of Cases

Case C-38/16

Compass Contract Services Limited
v
Commissioners for Her Majesty's Revenue & Customs

(Request for a preliminary ruling from the First-tier Tribunal (Tax Chamber))

(Reference for a preliminary ruling — Value added tax (VAT) — Repayment of overpaid VAT —
Right to deduct VAT — Procedures — Principles of equal treatment and fiscal neutrality —
Principle of effectiveness — National legislation introducing a limitation period)

Summary — Judgment of the Court (Fourth Chamber), 14 June 2017

*Harmonisation of fiscal legislation — Common system of value added tax — Deduction of input tax —
Rules governing the exercise of the right to deduct — Claims for deduction or for reimbursement —
National legislation introducing a reduction in the limitation period for exercise of the right to deduct —
Respect for the principles of equal treatment, fiscal neutrality and effectiveness — Different transitional
periods depending on the subject matter of the claim — Lawfulness*

The principles of fiscal neutrality, equal treatment and effectiveness do not preclude national legislation, such as that at issue in the main proceedings, which, in the context of the reduction of the limitation period, on the one hand, for claims for overpaid value added tax and, on the other hand, for claims for deduction of input value added tax, provides different transitional periods, with the result that claims relating to two accounting periods of three months are subject to different limitation periods depending on whether they concern the repayment of overpaid value added tax or the deduction of input value added tax.

The claim for repayment of overpaid VAT concerns the right to recovery of sums paid but not due which, according to settled case-law, helps to offset the consequences of the tax's incompatibility with EU law by neutralising the economic burden which that tax has wrongly imposed on the trader who, in fact, has ultimately borne it (see, to that effect, judgment of 20 October 2011, *Danfoss and Sauer-Danfoss*, C-94/10, EU:C:2011:674, paragraph 23).

Therefore, it should be noted that the element which characterises such a right to repayment, and from which it originates, is an overpayment to the tax authorities by a taxable person of an amount of VAT in breach of EU law. It is specifically the fact that the VAT is not due which underlies the right to recover and ensures, in accordance with conditions laid down in the national law of each Member State, having regard to the principles of equivalence and effectiveness, that the economic burden arising from that payment is neutralised in respect of that taxable person.

As regards the elements which characterise a claim for deduction of input tax, it should be observed that, whereas the right to repayment of overpaid VAT derives from general principles of EU law, as the Advocate General noted in point 59 of his Opinion and as is apparent from paragraphs 29 and 30 of the present judgment, the right to deduct input VAT is laid down in Article 17 et seq. of the Sixth Directive.

Therefore, unlike the element characterising the right to repayment of overpaid VAT, the right to deduct VAT, which is a right inherent in the VAT scheme established by the common system of VAT, is based on the existence of a tax that is due.

As the Advocate General observed in point 60 of his Opinion, such a difference in the nature of the rights at issue and the objectives pursued justifies the existence of legal rules specific to each of those two rights, inter alia, as regards their content and the conditions for their exercise, such as the limitation period for actions to enforce those rights and, specifically, the date from which such a period applies.

(see paras 30-32, 36, 38, 46, operative part)