



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

8 June 2023*

(Reference for a preliminary ruling – Principle of sincere cooperation – Principle of effectiveness – Tax levied by a Member State in breach of EU law – Breach established following a ruling of the Court of Justice – Right to be paid interest on the overpayment – National legislation limiting the right to the payment of interest to the period running until the thirtieth day following the publication of the ruling of the Court of Justice in the *Official Journal of the European Union*)

In Case C-322/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), made by decision of 15 March 2022, received at the Court on 12 May 2022, in the proceedings

E.

v

Dyrektor Izby Administracji Skarbowej we Wrocławiu,

interested party:

Rzecznik Małych i Średnich Przedsiębiorców,

THE COURT (Seventh Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, F. Biltgen and J. Passer (Rapporteur), Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- E., by M. Kułagowski and M. Niżnik, radcowie prawni, and by K. Trzópek-Piskorz, doradca podatkowy,

* Language of the case: Polish.

- the Dyrektor Izby Administracji Skarbowej we Wrocławiu, by K. Zygałło, radca prawny,
- the Rzecznik Małych i Średnich Przedsiębiorców, by P. Chrupek, radca prawny,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by K. Herrmann and W. Roels, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of principles of EU law, in particular the principles of sincere cooperation, equivalence, and effectiveness, in connection with the right of individuals to be paid interest when receiving a refund from a Member State in respect of a tax levied in breach of EU law.
- 2 The request has been made in proceedings between E., an investment fund with its registered office in the United States of America, and the Dyrektor Izby Administracji Skarbowej we Wrocławiu (Director of the Tax Administration Chamber, Wrocław, Poland) ('the director'), concerning a decision by the Polish tax authorities to limit and to refuse the payment of interest on overpayments of tax incurred in breach of EU law.

Legal context

Polish law

The Law on Corporation Tax

- 3 Article 3 of the consolidated version of the ustawa o podatku dochodowym od osób prawnych (Law on Corporation Tax) of 15 February 1992 (Dz. U. of 2011, No 74, item 397), as amended ('the Law on Corporation Tax'), provides:

'1. Taxable persons, if they have their registered office or central management in the territory of the Republic of Poland, shall be liable to tax on the entirety of their income, regardless of where it was obtained.

...

2. Taxable persons, if they do not have their registered office or central management in the territory of the Republic of Poland, shall be liable to tax only on income which was obtained in the territory of the Republic of Poland.

...'

4 Article 22 of the Law on Corporation Tax provides:

‘1. Taxation of dividends and other income from participation in the profits of legal persons whose registered office or central management is situated in the Republic of Poland ... is set at 19% of income obtained.

...’

5 Article 26 of the Law on Corporation Tax is worded as follows:

‘1. Legal persons, organisational units without legal personality and natural persons who are undertakings who make payments of amounts due on the grounds referred to in ... Article 22(1) shall be obliged, as paying agents, to collect, ..., on the date on which payment is made, flat-rate corporation tax on such payments ...

...

3. The paying agents referred to in paragraph 1 shall transfer the amounts of tax concerned, by the seventh day of the month following the month in which the tax was collected pursuant to paragraph 1 ..., to the account of the tax office managed by the head of the tax office which is competent in accordance with the registered office of the taxable person concerned ... Paying agents are required to send:

- (1) to the taxable persons referred to in Article 3(1) – information regarding the amount of the tax collected,
 - (2) to the taxable persons referred to in Article 3(2) and to the tax office – information regarding the payments made and the tax collected
- drawn up in accordance with a standard model.

...

3a. Paying agents are required to send the information referred to in point 1 of paragraph 3 by the date of the transfer of the amount of tax collected; they are required to send the information referred to in point 2 of paragraph 3 by the end of the third month of the year following the tax year in which the payments referred to in paragraph 1 were made, including where the paying agent, in the tax year, drew up and sent the information in the manner described in paragraph 3b.

...’

The Tax Code

6 Article 8 of the consolidated version of the ustawa – Ordynacja podatkowa (Law establishing the Tax Code) of 29 August 1997 (Dz. U. of 2012, item 749), as amended (‘the Tax Code’), provides:

‘A paying agent is a natural person, a legal person or an organisational unit without legal personality who is required under tax law to calculate tax, collect tax from a taxable person and pay tax to a tax authority in good time.’

7 Article 30 of the Tax Code provides:

‘§ 1. A paying agent who fails to fulfil the obligations laid down in Article 8 shall be liable for any uncollected tax or tax which has been collected but not paid.

...

§ 3. A paying agent ... shall be liable in respect of his or her entire assets for amounts due as referred to in paragraph 1 ...

...’

8 Article 72 of the Tax Code is worded as follows:

‘§ 1. The following shall be regarded as an overpayment:

...

(2) tax collected by the paying agent either unduly or in an amount greater than that due;

...’

9 Under Article 73 of the Tax Code:

‘§ 1. ... an overpayment shall arise on the date on which:

...

(2) the paying agent collects tax either not due or in an amount greater than that due;

...’

10 Article 74 of the Tax Code provides:

‘If an overpayment arises as a result of a ruling of [the Trybunał Konstytucyjny (Constitutional Court, Poland)] or a ruling of the Court of Justice of the European Union, and ...:

...

(2) [the tax liability of the taxable person] was settled by the paying agent[,], the taxable person shall determine the amount of the overpayment in a request for a refund thereof ...;

...’

11 Article 75 § 1 of the Tax Code provides:

‘Where the taxable person challenges whether the tax was properly collected by the paying agent or the amount of the tax collected, he or she may submit a request for a declaration of overpayment of tax.’

12 Article 77 of the Tax Code is worded as follows:

‘§ 1. An overpayment shall be refunded within:

...

(4) 30 days from the date on which the request referred to in Article 74 was submitted;

...’

13 Article 78 of the Tax Code provides:

‘§ 1. Overpayments shall be subject to interest equal to the default interest charged on tax arrears ...

...

§ 5. In the case provided for in Article 77 § 1(4) interest shall be due for the period:

(1) from the date on which the overpayment arose until the date on which it is refunded – provided that the taxable person submits a request for a refund of the overpayment within 30 days from the date on which the ruling of [the Trybunał Konstytucyjny (Constitutional Court)] entered into force or the operative part of the ruling of the Court of Justice of the European Union was published in the *Official Journal of the European Union* or within 30 days from the date on which the legislative act was repealed or amended in full or in part;

(2) from the date on which the overpayment arose until 30 days from the date on which the ruling of [the Trybunał Konstytucyjny (Constitutional Court)] entered into force or the operative part of the ruling of the Court of Justice of the European Union was published in the *Official Journal of the European Union* or from the date on which the legislative act was repealed or amended in full or in part – if the request for a refund of the overpayment was submitted more than 30 days after the ruling of [the Trybunał Konstytucyjny (Constitutional Court)] entered into force or the operative part of the ruling of the Court of Justice of the European Union was published in the *Official Journal of the European Union* or more than 30 days after that act was repealed or amended in full or in part.

...’

The dispute in the main proceedings and the question referred for a preliminary ruling

14 By a letter of 28 December 2017 addressed to the Polish tax authorities, the appellant in the main proceedings requested a declaration of overpayment and a refund in respect of overpayments of corporation tax incurred in 2012, 2013 and 2014, as well as interest on those overpayments for the periods running from the day on which those overpayments were collected until the day on which they were refunded.

15 The appellant in the main proceedings argued that a declaration in respect of those overpayments followed from the judgment of 10 April 2014, *Emerging Markets Series of DFA Investment Trust Company* (C-190/12, EU:C:2014:249) (‘the judgment in *Emerging Markets*’).

- 16 By decisions of 2 March 2018, the Polish tax authorities granted the request seeking a declaration of overpayment and a refund in respect of those overpayments. The refund took place on 28 March 2018.
- 17 By a decision of 24 April 2018, those authorities refused to pay interest on the overpayments.
- 18 By a decision of 6 August 2018, the director, by contrast, on the basis of Article 78 § 5(2) of the Tax Code, partially granted the request for the payment of interest on the overpayments.
- 19 More specifically, concerning the overpayments incurred in 2012 and 2013, the request for the payment of interest was granted in respect of the period running from the day on which the tax was collected until the thirtieth day following the publication in the *Official Journal of the European Union* of the judgment in *Emerging Markets* – namely 10 July 2014 – and was rejected as to the remainder. Concerning the overpayment incurred in 2014, the request for the payment of interest was rejected in its entirety, given that the tax had been collected after that date.
- 20 After its action against the decision of 6 August 2018 was dismissed by the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław, Poland), the appellant in the main proceedings brought an appeal on a point of law before the referring court, the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland).
- 21 The referring court notes that, in cases of overpayments incurred in breach of EU law, where the breach is established following a ruling of the Court of Justice, three factual situations may arise.
- 22 The request for a declaration of overpayment may have been submitted within 30 days of the publication of the ruling of the Court in the *Official Journal of the European Union*. In this case, the interest will run from the day on which the overpayment was collected until the day on which it is refunded.
- 23 Alternatively, the request may have been submitted after the date on which that time limit expired, although the overpayment arose before that date. In this case, interest will be due from the day on which the overpayment was collected until the thirtieth day following the publication of the ruling of the Court of Justice in the *Official Journal of the European Union*. The referring court notes that such a situation has arisen in the present case with regard to the overpayments incurred in 2012 and 2013.
- 24 Lastly, that request may have been submitted after the date on which the time limit expired, with the overpayment also arising after that date. In this case, interest will not be due. The referring court notes that such a situation has arisen in the present case with regard to the overpayment incurred in 2014.
- 25 The referring court observes that the limiting of the running of interest described in paragraph 23 of the present judgment is accepted by the Polish courts. However, it indicates that, concerning the situation described in paragraph 24 of the present judgment, Polish case-law states that, although the provisions of national law do not allow interest to be granted to the taxable person, such interest must nonetheless be granted to that taxable person on the basis of principles similar to those laid down in Article 78 § 5 of the Tax Code; however, the time limit for submitting the request for a declaration of overpayment must be calculated from the date on which the overpayment was collected.

- 26 The referring court questions whether, in a situation such as that in the case pending before it, limiting the period during which interest on an overpayment may run ensures that (i) the damage caused by the collection of tax not due is made good and (ii) the principle of sincere cooperation stemming from Article 4(3) TEU is implemented in full.
- 27 The referring court also notes that, although Article 78 § 5 of the Tax Code lays down identical rules for calculating interest on overpayments, whether those overpayments arise as a result of a ruling of the Court of Justice or a ruling of the Trybunał Konstytucyjny (Constitutional Court), the effects in relation to those overpayments differ depending on whether the overpayments arise as a result of a ruling of one or the other of those two courts. A ruling of the Trybunał Konstytucyjny (Constitutional Court) declaring a provision of national law to be incompatible with the Polish Constitution causes that provision to lose its binding force on the date of publication of that ruling. It is therefore not possible for an overpayment of tax to arise, as in the case pending before the referring court, after the publication of such a ruling of the Trybunał Konstytucyjny (Constitutional Court). In that context, the question arises as to whether, although it has applied principles which are formally identical, the Republic of Poland has ensured that the domestic remedies available and the remedies provided for the protection of individual rights derived from EU law are treated in the same way. In the latter case, the period for submitting a request for a declaration of overpayment is relatively short, given that, under Article 26(3) of the Law on Corporation Tax, the paying agent is required to notify the taxable person of the tax collected by, at the latest, the seventh day of the month following the month in which that collection took place.
- 28 In those circumstances, the Naczelny Sąd Administracyjny (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do the principles of effectiveness, sincere cooperation and equivalence expressed in Article 4(3) [TEU], or any other relevant principle laid down in EU law, preclude a provision of national law such as Article 78 § 5(1) and (2) of [the Tax Code], which provides that interest on overpaid tax which is collected by a paying agent in a manner not consistent with EU law is not due to the taxable person for the period after the expiry of 30 days from the date of publication in the *Official Journal [of the European Union]* of the judgment of the Court of Justice ... declaring that the collection of the tax is incompatible with EU law, where the request for a declaration of that overpayment was submitted by the taxable person after that time limit and the provisions of national law relating to the collection of the tax continue to be incompatible with EU law despite [the judgment in *Emerging Markets*]?’

Consideration of the question referred

- 29 By its question, the referring court asks, in essence, whether the principles of equivalence and effectiveness, in conjunction with the principle of sincere cooperation, are to be interpreted as precluding a piece of national legislation which, when a request for a refund of an overpayment of tax is submitted more than 30 days after the publication in the *Official Journal of the European Union* of a ruling of the Court of Justice from which the finding that the tax at issue is contrary to EU law is derived, limits the running of the interest on the overpayment due to the taxable person concerned to the thirtieth day following that publication, or even excludes interest entirely in a situation where that overpayment was incurred by the taxable person after that thirtieth day.

- 30 According to settled case-law, under the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of an infringement of EU law and to lay down detailed procedural rules, in respect of actions for safeguarding rights which individuals derive from EU law, which are no less favourable than those governing similar domestic actions (principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (judgment of 14 October 2020, *Valoris*, C-677/19, EU:C:2020:825, paragraph 21 and the case-law cited).
- 31 It also follows from settled case-law that any person on whom a national authority has imposed the payment of a tax, duty, charge or other levy in breach of EU law has the right, under EU law, to obtain from the Member State concerned not only a refund of the sum of money levied though not due, but also the payment of interest intended to compensate for the unavailability of that sum (judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraphs 51 and 52 and the case-law cited).
- 32 Such rights to a refund of sums of money the payment of which has been imposed by a Member State on a person in breach of EU law and to the payment of interest on those sums constitute the expression of a general principle of recovery of sums paid but not due (judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 53 and the case-law cited).
- 33 It is the fact that the payment of a tax, duty, charge or other levy has been imposed by a national authority ‘in breach of EU law’ which forms the basis for and justifies those rights (see, to that effect, judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 60).
- 34 Such a breach may concern any rule of EU law, whether it be a provision of primary or secondary law, or a general principle of EU law (judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 61 and the case-law cited).
- 35 As regards the nature of that breach, the Court has held that the rights to a refund of the payment made but not due and to the payment of interest which persons derive from EU law are the expression of a general principle, the application of which is not limited to certain breaches of EU law or excluded where there are other breaches (judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 62).
- 36 It follows that those rights may be relied on not only where a national authority has imposed the payment of a sum of money on a person on the basis of an EU act which proves to be vitiated by illegality, but also in other scenarios, in particular where the payment has been imposed on the basis of a piece of national legislation contrary to a provision of primary or secondary EU law, or where a national authority, when imposing that payment, has misapplied, in the light of EU law, an EU act or a piece of national legislation implementing or transposing such an act (see, to that effect, judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraphs 63 and 64 and the case-law cited).

- 37 Accordingly, the principles of EU law relating to the rights of persons to obtain a refund of sums of money the payment of which has been imposed on them by a Member State in breach of EU law and the payment of interest on those sums of money must be interpreted as meaning that they apply, generally and without prejudice to the detailed rules for the exercise of those rights in a given case, where it follows from a decision of the Court or a decision of a national court that the payment of a tax by way of deduction at source has been imposed by a national authority on the basis either of an incorrect interpretation of EU law or of an incorrect application of that law (see, to that effect, judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 69).
- 38 The purpose of the right to the payment of interest referred to in paragraph 31 of the present judgment is, as is apparent from the case-law cited in that paragraph, to compensate for the unavailability of the sum of money of which the person concerned has been wrongly deprived. That compensation may take place, depending on the circumstances, in accordance with the detailed rules laid down by the applicable EU legislation or, in the absence of such legislation, in accordance with those applicable under national law (see, to that effect, judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraphs 70 and 71).
- 39 In the absence of EU legislation in the field of requests submitted to Member States seeking a refund of taxes and, more specifically, in the field of the payment of default interest on taxes levied though not due, it is for the domestic legal order of each Member State to lay down the detailed rules according to which such interest must be paid in the event of a refund of taxes levied in breach of EU law. As is apparent from paragraph 30 of the present judgment, those detailed rules must, first, in accordance with the principle of equivalence, not be less favourable than those governing similar domestic actions and, second, in accordance with the principle of effectiveness, not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order.
- 40 In particular, such detailed rules for the payment of interest should not lead to the person concerned being deprived of adequate compensation for the loss sustained, which presupposes, inter alia, that the interest paid to that person covers the entire period running from the date on which the person paid the sum of money in question to the date on which that sum is refunded to that person (see, to that effect, judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 75 and the case-law cited).
- 41 It follows that EU law precludes a legal mechanism which does not meet that requirement and which consequently does not allow for the effective exercise of the rights to a refund and to the payment of interest guaranteed by EU law (judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 76 and the case-law cited).
- 42 In this instance, Article 78 § 5 of the Tax Code provides, in principle, for the payment of interest on an overpayment which runs until the date on which the overpayment is refunded and, in so doing, meets, prima facie, the requirement of EU law relating to the recovery of sums paid but not due.

- 43 However, the effect of that provision and the interpretation thereof by the Polish tax authorities is that, where the request for a refund is submitted more than 30 days after the publication in the *Official Journal of the European Union* of the ruling of the Court from which the finding that the tax in question is contrary to EU law is derived, the running of interest is limited in time or, as the case may be, interest is excluded entirely.
- 44 The limiting in time of the running of interest, which stems directly from the wording of Article 78 § 5 of the Tax Code, applies – as is stated, in essence, by the referring court (see paragraph 23 of the present judgment) – where the overpayment arises before the expiry of the thirtieth day following the publication in the *Official Journal of the European Union* of the ruling of the Court from which the finding that the tax in question is in breach of EU law is derived and where the request for a refund is submitted after that date. The ground relied on by the Polish Government to justify that limitation is the wish to avoid taxable persons deferring their requests for refunds of overpayments in order to benefit from more sizeable amounts of interest.
- 45 As regards excluding interest entirely, which follows from the Polish tax authorities' interpretation of Article 78 § 5 of the Tax Code, it occurs – as is stated, in essence, by the referring court (see paragraph 24 of the present judgment) – in a situation where the overpayment arises after the thirtieth day following the publication in the *Official Journal of the European Union* of the ruling of the Court from which the finding that the tax in question is in breach of EU law is derived. The ground relied on by the director to justify that exclusion is that the taxable person may oppose the levying of the overpayment by relying on the ruling of the Court.
- 46 In that context, it is necessary to examine whether and to what extent that mechanism for limiting and, as the case may be, excluding interest is contrary to the requirement of EU law, set out in the case-law cited in paragraphs 31 to 41 of the present judgment, that the taxable person who is subject to an overpayment of tax in breach of EU law be entitled, in addition to a refund of that overpayment by the Member State concerned, to the payment by that Member State of interest on that overpayment, calculated until the date on which the overpayment is refunded.
- 47 In that regard, it should be noted that requests for refunds of overpayments and for the payment of interest on those overpayments are subject to national rules of procedure, which may require the person making the request to act with reasonable diligence in order to avoid loss or damage or to limit the extent thereof (see, to that effect, judgment of 8 March 2001, *Metallgesellschaft and Others*, C-397/98 and C-410/98, EU:C:2001:134, paragraph 102). However, the fact remains that, as has been recalled in paragraph 39 of the present judgment, those detailed rules must comply with the principles of equivalence and effectiveness.
- 48 It is necessary to examine, first of all, whether the national legislation complies with the principle of effectiveness.
- 49 Regarding, in the first place, the examination of the mechanism for limiting in time the running of interest in the light of that principle, it should be noted that, assuming that the filing of a request for a refund within the 30 days following the publication in the *Official Journal of the European Union* of the ruling of the Court from which the finding that the tax in question is contrary to EU law is derived may be regarded as diligence which may reasonably be required of the taxable person who has taken part in the dispute in which that ruling of the Court was handed down, such a filing cannot reasonably be required of any other taxable person who, not being a party to that dispute, is not likely to be informed of the delivery of the ruling of the Court within such a

short time. The latter of those taxable persons may, without having been negligent, not become aware of the fact that the tax to which he or she has been subject was in breach of EU law until some time after the expiry of the 30-day time limit following that publication.

- 50 Moreover, even as regards the taxable person who was a party to the dispute which gave rise to that ruling, who, in principle, is aware of that ruling on the day of its delivery, that person may still not be reasonably expected to file a request for a refund within the 30 days following the publication of that ruling in the *Official Journal of the European Union*.
- 51 Where the finding that the tax in question is contrary to EU law depends on the result of verifications which, in its ruling, the Court asks the national court to carry out, a period which extends far beyond the expiry of that 30-day time limit may elapse before that tax is found to be contrary to EU law on the basis of the considerations set out in the ruling of the Court. That is all the more the case where that national court, when implementing the ruling of the Court, does not carry out the requested verifications itself but refers the case back to the tax authorities so that they can do so.
- 52 Regarding, in the second place, the examination, in the light of the principle of effectiveness, of the mechanism for excluding interest on the overpayment entirely, which is applied where that overpayment is incurred after the expiry of the 30-day time limit following the publication of the ruling of the Court in the *Official Journal of the European Union*, it should be noted that the fact that a tax imposed by a Member State proves to be contrary to EU law in the light of a ruling of the Court does not mean that a taxable person will be able in practice to prevent the payment of the tax in question. Indeed, as the European Commission notes in its written observations, it is not inconceivable that a tax may continue to be levied, in breach of EU law, after the delivery of such a ruling and its publication in the *Official Journal of the European Union*.
- 53 Here again, this may be all the more likely to be the case where the finding that the tax in question is contrary to EU law is dependent on the result of assessments and verifications which the Court, in its ruling, asks the national court to carry out and which, in turn, that national court asks the tax authorities to carry out.
- 54 The difficulty which the taxable person has in preventing the payment of the tax is all the greater where that payment is to be made – as in the present case – by a third-party ‘paying agent’ who is personally responsible for collecting the tax and paying it to the Public Treasury, and where that paying agent does not inform the taxable person of the collection carried out until after the fact, meaning that there is a time lag. The fact that that paying agent could have tried to oppose the payment has no bearing on that finding.
- 55 Concerning the finding set out in the previous paragraph relating to the time lag in the paying agent informing the taxable person, it should be emphasised that, assuming that the time lag applicable in the present case is – at most – one month and seven days from the date of collection of the tax and not – as the appellant in the main proceedings maintains in its written observations, relying on Article 26(3a) of the Law on Corporation Tax inasmuch as it refers to point 2 of paragraph 3 of that article – a period running until the end of the third month of the year following that in which the payment was made, which it will be for the referring court, where appropriate, to ascertain, it is clear that that time lag of one month and seven days may lead to a situation where the taxable person is not informed of the collection of the tax until after the expiry of the time limit laid down in Article 78 § 5 of the Tax Code.

- 56 It should be added, incidentally, that the foregoing considerations, from which it is apparent that the taxable person may not be promptly informed of the collection of tax that has been carried out by the paying agent, mean that the solution from case-law, alluded to by the referring court and consisting in amending the existing rule by postponing the expiry of the time limit for submitting a request for a declaration of overpayment to the thirtieth day following that collection of tax, cannot be accepted as capable of complying with the principle of effectiveness.
- 57 Having regard to the foregoing considerations, the answer to the question referred is that the principle of effectiveness, in conjunction with the principle of sincere cooperation, must be interpreted as precluding a piece of national legislation which, when a request for a refund of an overpayment of tax is submitted more than 30 days after the publication in the *Official Journal of the European Union* of a ruling of the Court of Justice from which the finding that the tax at issue is contrary to EU law is derived, limits the running of the interest on the overpayment due to the taxable person concerned to the thirtieth day following that publication, or even excludes interest entirely in a situation where that overpayment was incurred by the taxable person after that thirtieth day.
- 58 In view of those considerations, there is no need to answer the question referred in so far as it concerns the principle of equivalence.

Costs

- 59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

The principle of effectiveness, in conjunction with the principle of sincere cooperation, must be interpreted as precluding a piece of national legislation which, when a request for a refund of an overpayment of tax is submitted more than 30 days after the publication in the *Official Journal of the European Union* of a ruling of the Court of Justice from which the finding that the tax at issue is contrary to EU law is derived, limits the running of the interest on the overpayment due to the taxable person concerned to the thirtieth day following that publication, or even excludes interest entirely in a situation where that overpayment was incurred by the taxable person after that thirtieth day.

[Signatures]