

# Rödl & Partner

NEWSLETTER LATVIA

SETTING ACCENTS

Issue:  
November  
2023

In the focus: major case law changes regarding the  
VAT

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→ **Overpaid VAT in the focus of attention**

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## → Overpaid VAT in the focus of attention

On 9 October 2023 the Department of Administrative Cases of the Senate of the Supreme Court of Latvia has adopted an important judgment. It was adopted in case No. SKA-171/2023, where there was a dispute regarding the SRS decision on refusal to approve and refund the overpaid Value Added Tax (VAT) to a taxpayer. The above judgment of the Senate should rather be viewed as favourable for the taxpayer. In particular, the Senate lifted the judgement of the Regional Administrative Court rejecting the taxpayer's application for issue of a favourable administrative act regarding refunding of the declared overpaid VAT. Statements in this judgement can substantially affect the process of review of the justification of the overpaid VAT in future, as the Senate has presented conclusions regarding the legal consequences of the SRS decision to refuse approval and refunding of the overpaid VAT. The article we would like to introduce the main aspects in the Senate judgment to you and we also present our view about what taxpayers should take into account already now, before it is known how the SRS practice would change considering this judgment.

### New judgment of the Senate of the Supreme Court on overpaid VAT

In the judgment of 9 October 2023 in case No. SKA-171/2023 the Senate has, inter alia, stated the following.

- By the judgement of the Constitutional Court dated 11 April 2018 in case No. 2017-12-01 it was concluded that the overpaid VAT is taxpayer's property by its substance.
- In particular, the overpaid VAT is the taxpayer's funds which should be used for covering the taxpayer's future liabilities for payment of taxes and state duties or refunded to the taxpayer.
- By presenting transactions in the VAT return, a taxpayer may have either a VAT amount payable to the budget (liabilities to the state budget) or a VAT amount to be refunded from the budget (the liabilities of the state budget to the taxpayer).
- Exclusion of any transaction presented in the VAT return from the assessment, thus reducing the recoverable input tax, is a decision imposing unfavourable change to the taxpayer's legal situation irrespective of whether its liabilities towards the budget are increased or the liabilities

of the state budget to the taxpayer are reduced in the result.

- Considering the above, the SRS decision on refusal to approve and refund the overpaid VAT cannot be qualified as a refusal to issue a favourable administrative act regarding the taxpayer's entitlement to the refund of the overpaid VAT, instead, this SRS decision should be viewed as an unfavourable administrative act.
- Thus, the SRS decision on refusal to approve and refund the overpaid VAT irreversibly terminates the taxpayer's right to recovery of the input tax according to the declared amount.
- Any SRS decision by which a taxpayer is denied the right to recover the input tax should be viewed as an unfavourable administrative act; in particular, irrespective of whether this decision serves as the basis for refusal to approve and refund the overpaid VAT or assessment of additional VAT.
- In the course of hearing a case on the right of recovery of the input tax, the scope of examination by the Court only covers evaluation of the substantiation stated in the relevant SRS decision; the Court does not have to evaluate other circumstances, which could affect the right of recovery.
- Only if the Court approves the SRS substantiation for denying the right of recovery of the input tax, it can serve as the grounds for not lifting the SRS decision.
- A court judgment in a case where the substantiation of only the particular SRS decision on refusal to refund the overpaid VAT was examined does not restrict the rights of the SRS to carry out an audit also after the Court judgment and to evaluate the justification of the relevant overpaid VAT again, as well as to update the amount of the taxpayer's liabilities.

### Potential effect on recovery of the input tax and the process of recovery of the overpaid VAT

The most important consequence arising under the above referred Senate judgment is that the SRS decision on refusal to approve and refund the overpaid VAT should be viewed as and, from the point of view of its consequences, considered equal to an unfavourable administrative act. If a taxpayer does not agree to the SRS refusal, it has to appeal against this decision with the Director General of the SRS within 30 days instead of submitting the

same request once again by attaching additional documents and evidence for recovery of the input tax as it was before. Accordingly, in cases when the taxpayer fails to appeal against the SRS decision within 30 days, it will have to accept that the entitlement to recovery of the overpaid VAT will be irreversibly lost.

We noted that from the statements in the judgment it follows that all the above is applicable to not only the SRS decisions regarding overpaid VAT, but also to other SRS decisions serving as the basis for denying the taxpayer's right to recover the input tax in relation to any transaction presented in its VAT return.

## What should taxpayers take into account already now

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Taking into account that the relevant judgment of the Senate was adopted a very short time ago, at present it is not known how it will affect the SRS practice regarding the process of review of the justification of the overpaid VAT and recovery of the input tax. Therefore, taxpayers should already now pay increased attention to any communication with the SRS regarding the matters of the overpaid VAT and recovery of the input tax.

Our recommendations in this regard are presented below:

1. All the requested information and copies of documents must be prepared very carefully

If the SRS has requested additional information about a transaction presented in the taxpayer's VAT return and resulting in recovery of the input tax, for instance, a taxpayer is requested to submit copies of documents (an invoice, contract, accompanying documents of goods, customs declaration) or clarifications regarding the substance of the transaction, we recommend to exercise utmost care in preparing all the necessary information and documents. It is advisable to contact the SRS representative who has prepared the relevant information inquiry by telephone to clarify why the SRS has requested additional information about a particular transaction and what circumstances cause questions for the SRS. All the requested documents must be submitted. It should be assured that they are in the official state language or the necessary information should be translated into the state language. These actions will allow to avoid a refusal due to formal non-conformities.

2. The deadline for submission of information as defined by the SRS must be complied with

As soon as an inquiry by the SRS to submit additional information is received, collection of relevant documents and drafting of a reply should be started immediately.

3. The deadline for submission of information as defined by the SRS should be extended in the official manner

We know it from practice that sometimes when an inquiry by the SRS to submit additional information is received and the SRS has set a very short deadline for submitting it, it is possible to call the SRS official and to verbally agree on extending the deadline.

Considering the Court case analysed now, we recommend to extend the deadline in the official manner, in writing. In particular, the first step could be contacting the SRS by telephone, followed by the second step - submission of an application for the deadline extension in SRS EDS and to rely on this extension only when a written confirmation is received.

4. A negative SRS decision must be appealed within 30 days

If such a decision of the SRS on refusal to approve and refund the overpaid VAT or on denial of the right of recovery of the input tax is received and the taxpayer does not agree to it, it has to be appealed with the Director General of the SRS within 30 days.

The previous extensively used practice of submitting additional documents and information to the same SRS official will most probably not provide the desired result.

5. Increased attention should be focused on large scale investment projects

The condition that it might be necessary to provide an answer to an additional information inquiry by the SRS within a short time means that a taxpayer should take timely care of collecting documents and evidence substantiating the right of recovery of the input tax. It is desirable to identify eventually necessary documents or evidence during the process of planning a transaction. It is particularly important for large scale investment projects (for instance, real estate development projects), where a taxpayer makes large investment during the project development stage when VAT taxable revenue is not yet received. In such cases a taxpayer should be able to reliably prove its intent to perform VAT taxable transactions in future in order to substantiate the right of recovery of the input tax. In some cases this could be quite a complicated task.

We would like to note that timely and carefully elaborated tax risk management documents present a tool helping a taxpayer to provide necessary evidence. At the same time, training of the finance team provides additional security to avoid a company facing unpleasant surprises by losing the right to recover the overpaid VAT.

We would like to remind you that the tax advisers of Rödl & Partner team are always prepared to support you, including in communication with the SRS on VAT matters.

## Contact for further information

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## Imprint

Publisher:  
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LV-1010 Riga  
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