

German Court awards interest on delayed 8th and 13th Directive refund claims
N/K V R 41/06

Summary

The German Supreme Tax Court (the BFH) has ruled that delays in paying refunds of VAT under the 8th and 13th Directives entitle claimants to interest. The interest period runs from 15 months after the end of the year in which the right to deduct the VAT has arisen, until such time as the claimant is notified by the German tax authorities in a notice of assessment of the amount to be refunded. As claims for interest on delayed refund claims notified to taxpayers during calendar year 2007 must be filed by 31 December 2008, any business with an outstanding German VAT refund claim for this period should urgently consider submitting an interest claim.

Background

In its decision in case V R 41/06, the BFH concluded that an 8th or 13th Directive refund application should be considered to be equivalent to a domestic tax return (notwithstanding that the claimant is not obliged to submit a refund application). As domestic VAT repayments carried a right to interest, the same principle should apply to refunds due under the 8th and 13th Directives. The BFH held that any other interpretation would infringe Community law, as a ruling that such claims would not attract interest would disadvantage only foreign businesses (citing the ECJ decision in Lease Plan Luxembourg (C-390/96)).

As mentioned in the summary above, the interest period runs from 15 months after the end of the year in which the right to deduct the VAT has arisen, until such time as the claimant is notified of the amount to be refunded. In terms of current claims:

- if a refund claim was submitted for VAT incurred in any year prior to 2005, and that claim was notified to the claimant during calendar year 2007 or 2008, the claimant will be entitled to interest on the delayed payment (at 0.5% per month); claims for interest in respect of refund claims notified during calendar year 2007 must be filed by 31 December 2008 (i.e. 12 months from the end of the year in which the refund was notified);
- claims for interest in respect of refunds notified during calendar year 2008 must be filed by 31 December 2009;
- in respect of calendar year 2005, if a refund claim was notified to the claimant after 1 April 2007, this will also attract interest provided that a claim for the interest is filed by 31 December 2008;
- refund claims relating to VAT incurred in calendar year 2006 and notified after 1 April 2008 will also attract interest (subject to filing the claim for interest by 31 December 2009);
- claims for VAT incurred in calendar year 2007 and in subsequent years will also be liable to interest if notified outwith the 15 month period allowable, and subject to the interest claim having been filed by the relevant deadline, i.e. 12 months after the end of the calendar year in which the refund claim is notified;
- refund claims notified prior to 2007 will be out of time for claiming interest.

Any business which is in a position to benefit from this opportunity should take immediate action ahead of the 31 December 2008 deadline. 4 Eyes Ltd can assist with this exercise and can also facilitate VAT input recovery in any EU Member State either directly processing reclaims or through its European VAT network.