

## ECJ Issues Opinion in Romanian VAT Case

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# COUNTRY DIGEST

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The European Court of Justice on February 21 issued its opinion in *SC Mora IPR SRL v. Romania* (C-79/12), a case on the requirements established for VAT-deferred imports from France to Romania that was referred to the ECJ for a preliminary ruling on February 14, 2012, by Romania's Court of Appeals in Alba Iulia.

### Case Background

The taxpayer (Mora IPR) is a Romanian limited liability company that manufactures plastic products. Between August 7 and December 12, 2006, it imported to Romania industrial equipment from France. The imports were carried out under a temporary admission regime that provided for the deferral of import duties and VAT, as authorized by the vice president of the National Agency for Fiscal Administration.

The duration of the temporary admission regime was limited to 24 months, after which Mora IPR was to re-export the goods or put them into free circulation. Mora IPR did not fulfill that requirement, so the customs authority on September 6, 2010, put the goods into free circulation and assessed VAT on their importation.

Mora IPR filed an application with the competent national court, arguing that successive legislative amendments made to article 157 of the Tax Code between April 2007 and December 2008 constitute a restriction on the free movement of goods, are discriminatory in a competitive environment, and caused the company material damage in excess of €300,000.

The company maintained that the legislation is contrary to article 211 of the EU VAT directive because changes made to the wording of article 157 of the Tax Code between August 1, 2006, and October 18, 2007, led to the application of three different legal regimes to, respectively, the nonpayment of import VAT, the actual payment of VAT at customs at the time of the import declaration, and the deferred payment of im-

port VAT on the basis of a certificate issued under fixed conditions set later by order of the Minister of Economy and Finance.

Mora IPR argued that between August and December 2006, the actual payment of the customs VAT was not due. It said that under the temporary admission regime applicable in December 2006, no VAT would have been due on the importation of industrial equipment (from another EU member state) before April 15, 2007. In contrast, because of the amendments made to article 157 of the Tax Code between April 2007 and December 2008, the same operation conducted between August and December 2008 would have led to actual payment of VAT, except for economic agents that were able to obtain a certificate of deferred payment. Mora IPR said the temporary admission regime for the payment of VAT was modified at a time when the company could not make any changes to the material situation.

In its request for a preliminary ruling, the first question the Romanian court asked was whether article 211 of the VAT directive must be interpreted as precluding the application of a member state's domestic legislation that makes the deferred payment of VAT on imported goods conditional by requiring a certificate that is not required by the terms of the directive.

The ECJ said the fact that the national rules were modified several times and that the goods under the temporary admission regime were therefore subject to different rules applicable to all taxpayers, depending on the date on which they leave the customs regime, does not in itself constitute discrimination. Further, the fact that in this case, a certificate of deferred payment was demanded only for a specified period cannot be considered as discriminatory, the Court said.

On that basis, the answer to the Romanian court's first question is that article 211 of the VAT directive must be interpreted in this case as not precluding the application of the domestic legislation, if the conditions for obtaining the certificate of deferred payment comply with the principle of fiscal neutrality. That is a matter that must be determined by the national court, the ECJ said.

In its second question, the Romanian court asked whether article 26, paragraph 2, articles 28 and 30, and article 107, paragraph 1, of the Treaty on the Functioning of the European Union must be interpreted as precluding repeated legislative actions on the deferred payment of import VAT.

The ECJ emphasized to the national court the importance of clearly establishing the factual and legal issues that led to questions on the interpretation of EU law, the reasons for choosing the specific provisions of EU law for interpretation, and the link the national court has established between the EU provisions and the national legislation.

In this case, the Court said, the order of reference for the second question does not meet those require-

ments, so it is impossible to provide a specific interpretation of the provisions of EU law as it concerns the second question.

The ECJ therefore reverted to its answer to the first question, finding that article 211 of the VAT directive must be interpreted as meaning that it does not preclude the application of a regulation by a member state that makes the deferred payment of VAT on imported goods conditional by requiring a certificate that is not required by the terms of the directive, if the conditions for obtaining the certificate comply with the principle of fiscal neutrality (a matter that must be determined by the national court). ◆

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