



Italy: Refund of bank guarantee costs on VAT repayments

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The Italian Supreme Court rules that bank guarantee costs incurred for VAT repayments are fully refundable

This Tax & Legal Alert summarizes Italian Supreme Court judgment no. 5508/2020, confirming that taxpayers who submit bank guarantees to obtain Italian VAT repayments are entitled to a full refund of the bank charges. For the first time, the Italian Supreme Court clearly states that the refund of VAT guarantee costs is supported by EU principles of neutrality and proportionality. This judgment confirms KPMG Italy's stance and represents an opportunity for taxpayers to claim a full refund of bank guarantee costs.

The Italian Supreme Court has confirmed in its judgment no. 5508/2020 of 28 February 2020 that the Italian Revenue Agency must refund the guarantee costs incurred by taxpayers in order to obtain Italian VAT repayments.

Background

A company submitted a claim for a VAT repayment for 2001 and also submitted the bank guarantee required in order to obtain it. Subsequently, the company asked for a refund of the costs incurred for the guarantee, which the Revenue Agency denied. The company appealed against this refusal.

The Italian Supreme Court judgment

The Supreme Court states that article 8(4) of the Taxpayer's Charter - which provides that the Revenue Agency must refund the costs of bank guarantees required from taxpayers who are seeking a suspension, payment in instalments or a tax repayment - also covers the cost of bank guarantees submitted to obtain a VAT repayment.

The ruling is based on the consideration that, in light of established CJEU precedents, Member States certainly have some freedom in determining VAT repayment procedures, but the procedures must not expose the taxpayer to financial risks (see case C-387/16 of 28 February 2018, paragraph 24; case C-254/16 of 6 July 2017, paragraph 20; case C-107/10 of 12 May 2011, paragraph 33).

Furthermore, Italy has already had to modify its refund procedure, following infringement procedure no. 2013/4080.

It follows, according to the Supreme Court, that the denial of the refund would be against EU law.

The Supreme Court has clarified that the right to ask for a refund of the guarantee costs is subject to the statutory 10-year deadline and that - with this judgment - its opinion on this matter is 'settled'.

KPMG in Italy was one of the first to launch 'pilot cases' on this matter and is already helping several clients with their claims and appeals for guarantee cost refunds.

We invite clients to consider this opportunity, especially in light of this recent Supreme Court judgment.

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