

Insolvency and VAT in the Light of EU Law



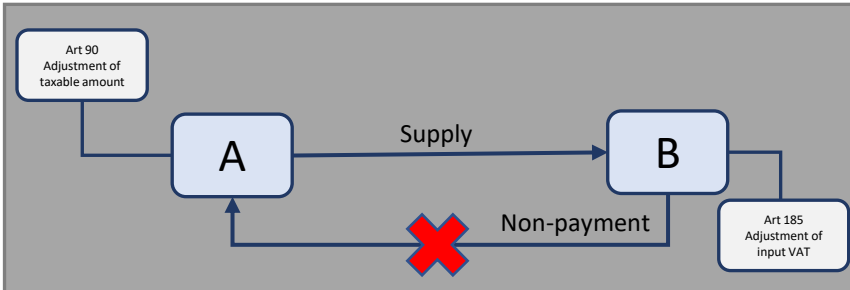
VAT

- Harmonized on EU-level
- VAT law determines situations subject to VAT
- Aim: realisation of the principle of neutrality
- Interest of tax authority: minimising loss of tax revenue

Insolvency Law

- No harmonization on EU-level
- Insolvency law regulates the enforcement of (VAT) claims in the insolvency of the (tax) debtor
- Aim: second chance for the debtor
- Interest of debtor: reorganisation of their business

Legal tension between VAT and insolvency law



Bad Debt Relief Art 90 (1) VATD

- Rule: reduction of taxable amount under certain conditions (eg partial or total non-payment)
- Purpose: VAT shall be strictly proportional to price actually received → safeguard of neutrality
- Effect: reduction of VAT payable or refund

Art 90 (2) VATD

- Rule: Derogation from Art 90 (1) VATD in case of non-definite non-payment

Outstanding Debt Art 185 (1) VATD

- Rule: adjustment of input VAT in case of a change in the factors used to determine the amount to be deducted
- Purpose: ensuring accuracy of deductions, neutrality and symmetry of the VAT System
- Effect: claim of tax authority against (insolvent) taxable person

Art 185 (2) VATD

- Rule: Derogation from Art 185 (1) VATD in case of non-payment

Scope of application of Art 90 (1) & (2) VATD:

- Art 90 (1) VATD: definite non-payment
 - Art 90 (2) VATD: non-definite payment
- } Interpretation of concepts?

Relationship between Art 90 (1) VATD and Art 185 (1) VATD:

- What is the relevant change in factors according to Art 185 (1) VATD?

How to mitigate risk of tax revenue loss without breaching EU law?

- Who should bear the insolvency risk of the recipient of the supply in respect of VAT – the State or the supplier?
- Possible solutions:
 - Preferential treatment of tax claims in insolvency proceedings?
 - Adjustment of deduction at the earliest opportunity?

Relationship...

Issue...

VATD...

Questions...