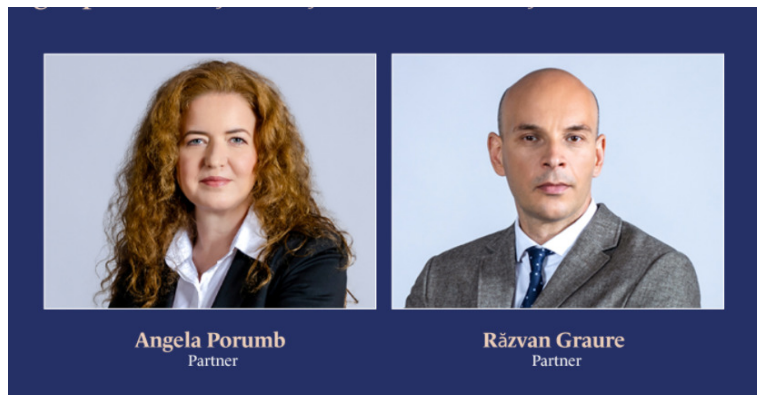


HCCJ Decision – a landmark tax victory regarding international intra-group expenses and packaging waste recycling



MUȘAT & ASOCIAȚII

Mușat & Asociații successfully assisted an international retail company in a lawsuit for the annulment of administrative tax documents issued by the National Agency for Tax Administration (ANAF), following which the High Court of Cassation and Justice (HCCJ) rendered a landmark decision regarding the right to deduct intra-group purchases of services and VAT related to the services provided, as well as the purchase of services for taking responsibility for the recovery and recycling of packaging waste. The court also clarified the competence of the authorities to check the quality of the provision of those services and the way in which liability is to be divided between the economic operator contracting the services for the recovery and recycling of packaging waste, to independent economic operators and the latter.

Mușat & Asociații's client requested the annulment of the administrative tax documents by which, on the one hand, ANAF established that the value of intra-group services is not part of the category of deductible expenses by the economic operator in Romania, establishing also the refusal to deduct the VAT corresponding to these services, with the imposition of the related ancillary taxes.

On the other hand, the tax authority proceeded with the verification of the fulfilment by Mușat & Asociații's client of the obligations regarding the recovery and recycling of packaging waste placed on the market, holding its responsibility for their performance, given that these services had been outsourced to specialized economic operators. Consequently, the tax authority established the liability of Mușat & Asociații's client with regard to the quality of the provision of these services, resulting in the refusal to recognize their deductibility but also in the imposition of the related ancillary taxes.

By its decision, the High Court established that the services provided by the affiliated companies are intended to ensure the continuity and improvement of the position of the company represented by Mușat & Asociații, such as to bring added economic value, rejecting ANAF's interpretation in the sense that the value of these services does not fall within the category of deductible expenses for the calculation of corporate income tax.

The Supreme Court emphasized that the right to deduct VAT related to these services cannot be conditioned by a subjective reassessment of the economic opportunity of the services by the tax authority but must be related to their necessity and usefulness for the taxpayer's economic activity.

At the same time, taking into account the particularities of the case, the Supreme Court held that the intra-Community acquisition of services was, in principle, a transaction falling within the scope of VAT with the right of deduction, definitively annulling the tax documents which had held the contrary.

With regard to the possibility of deducting the expenses incurred for the services of taking over responsibility for the recovery and recycling of packaging waste placed on the market when calculating corporate income tax, the High Court established that, since the company is required by the law to carry out activities relating to the management of packaging and packaging waste, but has the right to outsource the responsibility for providing them to authorized economic operators, the expenses incurred in this regard are tax deductible when calculating corporate income tax.

Therefore, the High Court of Cassation and Justice, in line with the rulings of the Bucharest Court of Appeal, decided in favour of the penalized taxpayer on the right to deduct the intra-Community purchases of services rendered by affiliates, through a detailed analysis of the transactions with the affiliates, including from the perspective of the transfer pricing file.

The High Court's decision has the potential to set an important precedent in tax case-law, in particular on the deductibility of expenses and VAT on services rendered by affiliates and those related to legal obligations on packaging waste, in a complex regulatory framework often interpreted restrictively by tax authorities. The favourable solution is based on the production of extremely complex evidence, including the expert's report carried out by a commission made up of 3 (three) forensic experts, assisted by expert advisors of the parties to the dispute.

This decision was also made possible due to the emphasis placed on an in-depth evidentiary analysis, in particular on the documentation related to intra-Community services and contracts concluded with operators specialized in waste management, in conjunction with the position of independent forensic experts.

The favourable judgments obtained both in the first instance and before the appellate court are the result of cooperation of Mușat & Asociații's lawyers within an interdisciplinary team of lawyers and tax consultants, both specialized in tax and administrative litigation, made up of Atty. **Alina Man** (Managing Associate), Atty. **Ana Maria Burada** (Managing Associate), **Roxana Bujoreanu** (Senior Tax Manager), Atty. **Georgiana Negulescu** (Senior Associate), Atty. **Iuliana Negura** (Associate), Atty. **Cristina Ciobanu** (Junior Associate), under the coordination of Partners Atty. [Angela Porumb](#) and [Razvan Graure](#) (tax consultant).

This solution reinforces the importance of an integrated approach to tax litigation, in which legal and tax expertise converge to defend taxpayers' rights against misinterpretation by the authorities.