

RESOLUTION FROM THE ECJ CASE LAW C-82/12 Claiming of Excise Duty on Hydrocarbons

Excise Duty in retail sales of hydrocarbons

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Excise Duty - Background

- ✓ The Spanish so called “*céntimo sanitario*” is the Excise Duty on retail sales of specific hydrocarbons (EDRSH) that had been established as of 2002 to the end of 2012 by the Spanish Government over the sales of fuel, with the aim of financing the public health system in Spain. In this sense, the tax did levy the purchases of fuel made by any person (private individual or Company) in any gas station of Spain, by adding a surcharge between 1.2 and 4.8 cents of euro per litre of fuel (the amount was established by the Autonomous Regions).
- ✓ Last February 27, the European Court of Justice (ECJ) did raise a Resolution against Spain as regard the legality of the EDRSH.
- ✓ The Resolution comes from a prejudicial question raised by the Spanish Court of Cataluña concerning the rejection, by the previous administrative instances, of an unduly paid tax refund claim filed by the entity Transportes Jordi Besora, SL
- ✓ The EU Directive 92/12/EC gives right to the hydrocarbons to be levied by taxes other than excise duties as far as the general process of the excise duties or the VAT is respected, as well as it is established for an evidenced specific aim other than budgetary.
- ✓ The Court has declared the EDRSH contrary to Law since the specific aim of the tax is not covered in this case. Furthermore the Court applies the Resolution retroactively to 2002.

Excise Duty – Refund claim

✓ Either the company carrying out the retail sale (charging the tax) or the person who has borne the tax (haulier Company, among others) are legally allowed to claim the refund of the tax. In any case, the refund would be ordered to the person who has borne the tax.

✓ Applicable procedures:

✓ Within the time barred by Law (4 years): **unduly paid tax refund claim** before the Spanish Tax Authorities.

In case of dismissal decisions it shall be followed by the Economic-Administrative appeal and the judicial way

✓ Periods barred by Law: **Patrimonial Responsibility of the State claim** due to the infringement of the EU Legislation.

Excise Duty – Scope of services

✓ Diligens' professionals have a large experience concerning tax proceedings, doing the work in two phases:

1. Preliminary phase: in-depth analysis of the support documentation (invoices) provided by the client, supporting the payment of the tax and, therefore, the legal arguments in order to receive a favourable decision of the claim.

Our fees for this preliminary phase would be fixed depending on the format and number of documents to be handled.

2. Claim filing phase: preparation and filing of the claim in order to ask for the refund of the unduly paid tax before the Spanish Tax Authorities, as well as appeals before next instances in case of negative resolutions.

Our fees for this second phase, only in case of success, are established as a “success fee”, this amounting to a percentage, to be agreed beforehand, of the amount effectively refunded to the client (tax paid and delay interests).

Contact

DILIGENS TAX CONSULTING, SL

Paseo de la Castellana, 135

28046 – Madrid

Spain

t +34 620 05 66 93

info@diligens.es