

**Case C-680/23**

**Request for a preliminary ruling**

**Date lodged:**

14 November 2023

**Referring court:**

Tribunal Administrativo e Fiscal do Funchal (Portugal)

**Date of the decision to refer:**

13 November 2023

**Applicant:**

Modexel – Consultores e Serviços, SA

**Defendant:**

Autoridade Tributária e Assuntos Fiscais da Região Autónoma da Madeira

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[...]

TRIBUNAL ADMINISTRATIVO E FISCAL DO FUNCHAL  
(ADMINISTRATIVE AND TAX COURT, FUNCHAL, PORTUGAL)

ORGANISATIONAL UNIT

[...]

Administrative proceedings

[...]

**Applicant:** Modexel – Consultores e  
Serviços, SA

**Defendant:** AT – Tax and Customs  
Authority

[...]

**REQUEST FOR A PRELIMINARY RULING**

For the attention of the Court of Justice of the European Union

I. Referring court

*Tribunal Administrativo e Fiscal do Funchal (Administrative and Tax Court, Funchal) [...]*

## II. Parties

*Modexel – Consultores e Serviços, SA [...]*

v

*Tax authority of the Autonomous Region of Madeira [...]*

## III. Subject matter of the main proceedings and relevant facts

*1. Modexel – Consultores e Serviços, SA, filed a declaration of cessation of activity with effect from 28 February 2015.*

*2. At the time of cessation of activity, it declared a balance in its favour in respect of valued added tax (VAT) in the amount of EUR 12 456.20.*

*3. It recommenced its activity on 10 May 2016, filing the appropriate declaration of recommencement of activity.*

*4. When it recommenced its activity, it deducted the amount of the balance in its favour, seeking to offset that amount in the first return filed after it recommenced its activity.*

*5. The Tax Authority of the Autonomous Region of Madeira refused to allow it to do so, arguing that Modexel – Consultores e Serviços, SA should have applied for a refund of the balance in its favour within 12 months from the date on which it ceased its activity and that, since it had not done so, that amount had reverted to the Portuguese State.*

## IV. Relevant provisions of national and European Union law

*Article 22 of the VAT Code:*

*4 – Where the amount of the appropriate deductions exceeds the amount of tax due in the same [assessment] period, the excess may be offset in following assessment periods.*

*5 – If, after 12 months have elapsed since the period in which the excess arose, there is still a balance in favour of a taxable person of more than EUR 250, that taxable person may apply for a refund of that balance.*

*6 – By way of derogation from the previous paragraph, a taxable person may apply for a refund before the end of the 12-month period if that person ceases its activity or becomes subject to Articles 29(3) and (4), 54(1) or 61(1), provided that the amount due to be refunded is equal to or more than EUR 25, and also if the*

*balance in its favour exceeds EUR 3 000. (As amended by Lei No 10/2009, de 10/03 (Law No 10/2009 of 10 March 2009))*

*Article 183 of the VAT Directive*

*Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period.*

*However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.*

V. Reasons why the referring court is uncertain about the interpretation or validity of European Union law

*In the light of the facts at issue in these proceedings, this court takes the view that the interpretation of Article 183 of the VAT Directive is open to question as regards the interpretation of the expression ‘the following period’.*

*In other words, the dispute concerns whether, as the Tax authority of the Autonomous Region of Madeira maintains, that expression is limited, literally, to the following tax period or whether, as a result of the practice adopted by Modexel – Consultores e Serviços, SA, there may be a time lapse between those two periods on account of the cessation of activity (in the period in which the excess is carried forward) and of the subsequent recommencement of that activity (with the deduction being made in the period in which the activity is recommenced).*

VI. Questions referred for a preliminary ruling

*‘1) Must the expression “the following period” in Article 183 of the VAT Directive be interpreted as referring literally to the period which immediately follows in the calendar year?*

*2) If the answer to question 1 is in the negative, where an undertaking ceases its activity and subsequently recommences that activity, with a period of 15 months having elapsed between those two points in time, is that undertaking entitled to deduct the amount of the excess which it carried forward when it ceased its activity in the first assessment that it files after recommencing its activity?’*

Funchal, 13 November 2023

[...] [national procedure]