KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

May 2024

NEWS FROM THE CJEU

Advocate General raises no objections to German provisions on VAT grouping

CJEU, Opinion of Advocate General of 16 May 2024 – case C-184/23 – Finanzamt T II

The Advocate General at the CJEU published his opinion on the regulation on German VAT groupings on 16 May 2024 (CJEU case C-184/23). This was based on the following questions from the request for a preliminary ruling referred by the German Federal Tax Court (BFH) (BFH resolution of 26 January 2023 (V R 20/22 (V R 40/19)):

BFH questions in the proceedings C-184/23

1. Does the bringing together of several persons into a single taxable person, in accordance with Art. 4 (4) (2) of the Directive 77/388/EEC, have the effect of removing supplies of goods or services made for a consideration between those persons from the scope of VAT in accordance with Art. 2 no. 1 of that Directive?

2. Do supplies of goods or services made for consideration between those persons fall within the scope of VAT in any event in the case where the recipient of the supply is not (or is only partly) entitled to deduct input tax, as there is otherwise a risk of tax losses?

Several Advocates General represented different views in their opinions on the question of whether internal transactions between the members of the group are within the scope of VAT and thus taxable.

On the one hand, transactions for a consideration effected between the individual members of a VAT group should be considered as having been carried out by the group for itself and, consequently, non-existent for VAT purposes (Opinion of Advocate General Jääskinen in the cases Commission/Ireland of 27 November 2012 - C-85/11, ref. 42, and Commission/Sweden of 27 November 2012 – C -480/10, ref. 40; Opinion of Advocate General Mengozzi in the cases Larentia + Minerva and Marenave Schiffahrt of 26 March 2015 - C-108/14 and C-109/14, ref. 49). They offer no occasion for the levying or setting off of VAT (Option of Advocate General van Gerven in the case Polysar Investments Netherlands of 24 April 1991 - C-60/90, ref. 9).

Content

On the other hand, supplies between the group members should fall within the scope of VAT and therefore be taxable (Opinion of Advocate General Medina in the case Finanzamt T of 27 January 2022 - C-269/20, ref. 36 f., and in the case Norddeutsche Gesellschaft für Diakonie of 13 January 2022 - C-141/20, ref. 64 and 73 with sample calculations).

Advocate General's Opinion on 16 May 2024
It follows from the Advocate General's considerations that the aims of Art. 4 (4) (2) in conjunction with Art. 2 no. 1 of the Sixth Directive, contrary to the referring court's view, do not preclude an interpretation of these provisions that internal transactions in a VAT grouping are not subject to VAT.

The Advocate General proposed that the CJEU answer the questions submitted by the BFH as follows:

Art. 2 no. 1 and Art. 4 (4) (2) of the Directive 77/388/EEC must be interpreted as meaning that supplies of services for consideration between persons forming part of a group formed by legally independent persons, but closely bound to one another by financial, economic and organizational links, in line with Art. 4 (4) (2) of the Sixth Directive 77/388, as amended by Directive 2000/65, do not fall within the scope of VAT, even where the recipient of the supply of goods or services is not (or is only partly) entitled to deduct input VAT.

Please note:
According to the Advocate General, internal transactions within the VAT group do not fall within the scope of VAT or are not VATable according to German terminology. If the CJEU adopts this view, then the German view on VAT groups with regard to non-taxable intra-group transactions can remain (as before). However, it remains to be seen whether the CJEU will actually follow the Advocate General's arguments. Directive 77/388/EEC (6th Directive) is still applicable to the facts of the case before the CJEU, as can be seen from the question referred by the BFH. Ultimately, however, this does not play a decisive role, as the VAT Directive does not contain any decisive changes in this respect either, so that the CJEU's decision should also be transferable to later disputes that have to be resolved with the successor regulation in the VAT Directive.

Charging stations for electric vehicles

CJEU, Opinion of the Advocate General of 25 April 2024 – case C-60/23 – DCS

This Advocate General opinion concerns the VAT qualification of the supply of a trader in connection with the use of an electric vehicle that is charged at the charging station of a different trader.

The case
DCS has its place of business in Germany with no fixed establishment in Sweden. This company supplies users of electric vehicles in Sweden with access to a network of charging points. Via that network, users receive real-time information on prices, location, and availability of charging points, in addition, to functions for locating charging points and route planning.

The charging points on the network are not operated by DCS but by charging point operators with which DCS has entered into contracts. DCS provides electric vehicle users with a card and an application for authentication to enable them to charge their vehicles at the charging points (hereinafter referred to as card/app users). When the card or application is used, the charging session is registered with a charging point operator, which then invoices DCS for that session. Invoicing takes place on a monthly basis at the end of each calendar month and payment must be made within 30 days.

On the basis of the invoices received from the charging point operators, DCS bills the card/app users, first for the quantity of electricity supplied on a monthly basis, and second for access to the network and ancillary services. The price for the electricity supplied varies depending on the quantity charged, but a fixed fee is levied for access and the service provided, which is charged regardless of whether the user actually purchased electricity during the relevant period or not. It is not possible to only purchase electricity from the company without at the same time paying for access to the network.

In 2021, DCS applied to the Revenue Law Commission, Sweden for a tax ruling. In 2022, that government agency issued a ruling stating that the supply made by DCS constituted a complex transaction principally characterized by the delivery of electricity to users and that the place of delivery was to be regarded as being in Sweden.

The Swedish tax authorities brought an action before the Supreme Administrative Court), the referring court, requesting confirmation of that tax ruling. DCS also appealed to that court, requesting that the tax ruling be amended. DCS argued before the national court that there were two separate supplies, namely a supply of electricity and a supply of services (the facilitation of access to the network of charging points), so that the only part of the

supply that should be taxed in Sweden is the part consisting of the supply of electricity.

The Revenue Law Commission is divided. On the one hand, the majority of members take the view that charging point operators supply electricity to DCS, which in turn supplies it to the users. This is therefore a chain of operations in which charging point operators are not contractually bound to those users.

On the other hand, a minority within the Revenue Law Commission takes the view that DCS provides users with a service consisting, in particular, of the provision of a network of charging points and subsequent invoicing, which implies that it grants them some form of credit for the purchase of electricity. This approach takes particular account of the fact that users are free to choose among conditions such as the quality, quantity, time of purchase and manner of use of the electricity.

The Supreme Administrative Court decided to stay the proceedings and to refer the following questions to the CJEU for a preliminary ruling:

1. Does a supply to the user of an electric vehicle consisting of the charging of the vehicle at a charging point constitute a supply of goods in line with Art. 14 (1) and Art. 15 (1) of the VAT Directive?

2. If the first question is affirmed, is such a supply then to be deemed to be present at all stages of a chain of transactions which include an intermediary company, where the chain of transactions is accompanied by a contract at every stage, but only the user of the vehicle has the right to decide on matters such as quantity, time of purchase and charging location, as well as how the electricity is to be used?

From the reasons for the decision

The Advocate General says that CJEU considers in its ruling dated 20 April 2023 (C-282/22) that a complex transaction consisting of the supply of electricity to the battery of an electric vehicle and access to charging devices and the necessary technical and IT support constitutes a supply of goods within the meaning of Art. 14 (1) and 15 (1) of the VAT Directive. This seems to settle the referring court's first question. Therefore, at the request of the CJEU, the Opinion at hand is limited to the analysis of the second question.

The Advocate General holds the view that DCS provides two separate and independent supplies: a supply of services and a supply of goods. The supply of services consists in providing the driver of an electric vehicle with a card or an app which provides information about, and allows access to, the network of charging points. For that supply of services, DSC issues an invoice with a fixed fee, regardless of whether electricity is bought or not. On the basis of Art. 43 of the VAT Directive, the place of "supply" of that service is Germany, because that is where the service provider is established.

The transactions involved in the supply of electricity concern the relationship between the charging point operator and DCS and the relationship between DCS and the card/app user.

There are three possible ways the relationships involved could be characterized for the purposes of the VAT treatment.

The first of these comes from the Auto Lease Holland case-law. This line of case-law treats transactions such as those between DCS and the card/app user as a supply of services granting credit, which, according to Art. 135 (1) (b) of the VAT Directive, exempted from VAT. The Advocate General does not find this approach appropriate for the treatment of the transactions at issue.

The second option is the treatment of the two transactions as successive sales, both subject to Art. 14 (1) of the VAT Directive; this is the so-called "buy-sell model".

The third possibility, which the Advocate General appears to prefer, is to understand the transactions involved as being based on a commission model within the meaning of Art. 14 (2) (c) of the VAT Directive. This option, despite not being raised by either the reference for a preliminary ruling or the participants in the written part of the procedure, was discussed at the hearing. In the Advocate General's view, this option is the most appropriate characterization of the transactions involved in the case under discussion.

If the two conditions of Art. 14 (2) (c) of the VAT Directive (the existence of a contract and the similarity of the supplies) were not, in the CJEU's opinion, met it should instead be considered that the supply of electricity to the user is deemed to be made by the company, which provides access to a network of charging points to users within the meaning of Art. 14 (1) of the Directive.

The Advocate General rules, therefore, that the charging of an electric vehicle at a network of charging points to which a user has access by means of a subscription concluded with a company other than the individual charging point implies that the electricity consumed is delivered

from that operator to that user, and the company offering access to those charging points acts, in that supply, as a commissionaire.

Please note:
In its judgment of 20 April 2023 - C-282/22, the CJEU has already ruled on a case concerning e-charging. As the supply of electricity is the main component of this supply, it constitutes a supply of goods within the meaning of Article 14(1) of the VAT Directive if it consists of the provision of charging equipment for electric vehicles (including the connection of the charger to the vehicle's operating system), the transmission of electricity with appropriately adapted parameters to the batteries of the electric vehicle, the necessary technical support for the users concerned and the provision of IT applications.

In the present reference for a preliminary ruling, there is the particularity that the charging stations are not provided by the company, but by a contractual partner. Only after the company has received the invoice from the operators does it issue monthly invoices to the users separately for the supply of electricity and for access to the network service. The CJEU will therefore have to answer the question of whether a supply can be assumed at all stages of the transaction chain if only the user of the vehicle can decide on circumstances such as the quantity, time and place of charging and the way in which the electricity is used. Somewhat surprisingly, the Advocate General comes to the conclusion in her opinion that the transactions would be based on a commission contract. This idea was not addressed either in the request for a preliminary ruling or in the written comments of the parties involved. However, according to the Advocate General, it was apparently discussed at the oral hearing before the CJEU. This is a remarkable and unusual development in CJEU proceedings. It will be interesting to see whether the CJEU follows the Advocate General here.

Basis of assessment for in-kind contributions for a consideration

CJEU, ruling of 8 May 2024 – case C-241/23 – P

This CJEU ruling concerns the basis of assessment for in-kind contributions for a consideration from shareholders and the input VAT deduction at the receiving company.

The case

P is a company registered for VAT in Poland and its authorized capital is divided into shares. Between the end of 2014 and the beginning of 2015, P sought to increase its capital through in-kind contributions from W and B. More specifically, those two companies concluded several contracts with P concerning the transfer of properties they owned and a cash contribution in exchange for shares in P. These contracts stipulate that the consideration for the in-kind contributions to P's capital is shares in the latter, valued at their issue price. That price is 35,287.19 zlotys (PLN), that is, approx. EUR 8,123 per share. To determine that price, the parties used, as a basis, the value of the properties contributed, which had been assessed in relation to market prices by a third party.

Conversely, the tax authorities found that the basis of assessment for the contributions of W and of B as part of increasing P's capital should be calculated taking the nominal value of shares in P into account, corresponding to 50 PLN, (that is, approximately EUR 11.50) per share, and not their issue value of 35,287.19 PLN, that is approximately EUR 8,123 per share. The tax authorities therefore questioned P's right to deduct the VAT concerning those contributions and corresponding to the amount exceeding that calculated on the nominal value of the shares.

The Supreme Administrative Court dealing with the case has doubts as to the interpretation of Union law and referred the case to the CJEU for a preliminary ruling.

From the reasons for the decision

Art. 73 of the VAT Directive must be interpreted as meaning that the taxable amount of a contribution of property by one company to the capital of a second company in exchange for shares in the latter must be determined in relation to the issue value of those shares where those companies agreed that the consideration for that capital contribution was to be that issue value.

The CJEU substantively relies on settled case-law that the taxable amount for a supply of goods effected for consideration is represented by the consideration actually received for them by the taxable person. This consideration is thus the subjective value, that is to say, the value actually received, and not a value estimated according to objective criteria (cf. in this regard the ruling of 19 December 2012, Orfey, C-549/11, ref. 44 and the case law cited therein).

Please note:
Here, the CJEU once again makes fundamental statements on the basis of assessment for VAT, which must be taken into account in German law (§ 10 UStG). In

addition, the judgment also contains details on the exchange of services and the direct link between the transfer of immovable property and the allocation of shares, with the focus of the decision being on determining the valuation of these shares in the VAT assessment basis. Here, the CJEU agrees with the taxpayers' position that the issue value is decisive in the specific case.

Punitive nature in the case of delayed submission of an application to register VAT

CJEU, ruling of 11 April 2024 – case C-122/23 – Legafact

This CJEU ruling concerns the legal consequences of a VAT registration that has been carried out too late in connection with the small business regulation.

The case

The Bulgarian company, Legafact operates in the area of business consulting. Initially, it was not registered for VAT. On 21 August 2018, it issued four invoices relating to “remuneration from the contract of 30 November 2012” for a total of BGN 114,708 (approx. EUR 58,600), which were recorded as “revenue from sales of services”. On 23 and 24 August 2018, Legafact issued two further invoices with the same subject matter for a total value of BGN 57,004 (approx. EUR 29,100), which were recorded in the same way.

On 3 September 2018, Legafact submitted application for the compulsory VAT registration. The tax authorities responsible for income issued a notice on the compulsory registration on 14 September 2018, stating that the company was registered for VAT purposes with effect from 19 September 2018.

The tax authorities considered that the issuing of one of the invoices of 21 August 2018 for an amount of BGN 34,202 (approx. EUR 17,500) had resulted in the taxable turnover threshold of BGN 50,000 (approx. EUR 25,600), above which VAT registration is compulsory, being exceeded and that the supply set out in that invoice was subject to VAT under Bulgarian law.

The tax authorities concluded that, under Bulgarian law Legafact should have submitted its application to register for VAT within a time limit of seven days from the date on which it had reached that threshold for taxable turnover, that is, at the latest by 28 August 2018, which it did not do. On the basis of Bulgarian law, those authorities decided that that company was liable to pay VAT on the taxable supplies that had resulted in it exceeding the taxable turnover of BGN 50,000 (approx. EUR 25,600) from the date on which that turnover was exceeded until the date on which the company was registered for VAT.

Therefore, the tax authorities issued a tax adjustment notice on 27 December 2019 in which they imposed a VAT debt on Legafact in the amount of BGN 24,701.66 (approx. EUR 12,600) in respect of principal and BGN 3,218.33 (approx. EUR 1,650) in respect of interest, for the tax period of August 2018, on account of the taxable supplies made by that company from 21 August 2018 until the date of its actual registration for VAT. The Supreme Administration Court dealing with the case referred it to the CJEU for a preliminary ruling.

From the reasons for the decision

According to the CJEU, the VAT Directive does not preclude national legislation, adopted by a Member State in accordance with Art. 287 of the VAT Directive, on the basis of which the entitlement to a VAT exemption provided for in that Directive for small enterprises subject to the condition that the taxable person whose annual turnover or turnover measured during a period of two consecutive months exceeds the amount specified for that Member State in that provision must lodge an application for VAT registration within a prescribed period.

Furthermore, the VAT Directive does not preclude national legislation which provides that a failure by a taxable person to fulfil the obligation to lodge an application for VAT registration within the time limits in the cases referred to above, results in the incurrence of a tax debt. This applies to the extent that if and in so far as it is not limited to recovering VAT on transactions carried out during the period in which that tax would have been charged if the taxable person had fulfilled their obligation to register for VAT within the time limits, complies with the principle of effectiveness in countering infringements of harmonized VAT rules and satisfies the proportionality requirements, in accordance with the CJEU case law.

Please note:

1. the CJEU ruling essentially concerned the conditions for the application of the Bulgarian small business regulation in connection with the registration obligations and sanction options applicable there.

2. from 1 January 2025, the small business regulation is to be revised in the EU and thus also in Germany (JStG 2024, see note at the end of the newsletter). Until now, only entrepreneurs based in Germany were able to make use of the small business regulation of

§ 19 UStG in Germany. The new regulation makes it possible for entrepreneurs based in the rest of the Community to also apply the small business regulation in Germany. A special notification procedure will be introduced so that entrepreneurs based in Germany can claim the tax exemption in another member state. The Federal Central Tax Office will be responsible for carrying out the notification procedure and the cooperation with other Member States required under EU law. The mandatory implementation of Directive 2020/285/EU of 18 February 2020 is also being used in Germany as an opportunity to redesign the special regulation for small businesses. It remains to be seen how the other member states will implement the new small business regulation.

According to the new version of § 19 (4) UStG planned from 1 January 2025, an entrepreneur established in the rest of the Community whose annual turnover in the Community did not exceed the threshold of EUR 100,000 in the previous calendar year as stipulated by EU law and does not exceed this threshold in the current calendar year can also make use of the small business regulation in accordance with paragraph 1 for their domestic (in Germany) transactions. The prerequisite for this is that his domestic turnover is below the amounts specified in § 19 (1) sentence 1 UStG (new version) and that he has been issued or confirmed a valid identification number for small businesses for the tax exemption in Germany by his country of residence. The country of residence is responsible for checking the annual turnover in the Community. If the annual turnover in the Community territory exceeds EUR 100,000, the tax exemption will no longer apply from this point in time.

NEWS FROM THE BMF

Online-event services in the B2C sector

BMF, guidance of 29 April 2024 - III C 3 - S 7117-j/21/10002 :004

According to the guidance from the German Ministry of Finance (BMF), the following applies for online-event services in the B2C sector, in particular in the area of art and culture:

Preproduced content
In the case of the provision of a recording (including a preproduced recording) of an event by a trader (event organizer) in a digital form that can be viewed by the recipient at a later fixed or freely chosen time, and that is transmitted solely over the internet or a similar electronic network, this is a supply of a service provided electronically within the meaning of § 3a (5) sent. 2 no. 3 German VAT Law (UStG). The place of supply is determined in accordance with § 3a (5) sent. 1 UStG if the recipient of the supply is not a trader.

In contrast to this, the distribution and onward distribution of preproduced content already made available on the internet constitutes the supply of a radio or television service if that content is simultaneously broadcast by a radio or television station (Art. 7 (3) in conjunction with Art. 6b (1) and (2) (b) VAT Implementing Regulation). The place of supply of these radio and television services within the meaning of § 3 (5) sent. 2 no. 2 UStG is also determined, if the recipient of the supply is not a trader, in accordance with § 3a (5) sent. 1 UStG.

For these supplies of services or radio/television services that are provided electronically there is neither any question of a VAT exemption in accordance with § 4 no. 20 UStG, nor is the use of a reduced VAT rate permissible. The reduction in accordance with § 12 (2) no. 14 UStG is not relevant as publications consisting entirely, or to a large extent, of video content or audible music, are excluded from this.

Live-Streaming
In the case of the provision of a livestream of an event by a trader (event organizer), which is carried out parallel to or in place of the event “on location” and in real time, this is a supply within the meaning of § 3a (3) no. 3 (a) UStG. If this supply is provided to a non-trader, the place of supply is the place in which the recipient of the supply has their residence, usually resides, or is domiciled.

For livestreams of events, a VAT exemption in accordance with § 4 no. 20 (a) and (b) UStG applies to the extent that the transactions are provided by an establishment benefitting from this provision. The decisive point in evaluating this is the interaction with the public, in addition to different expressions such as applause, calling for an encore, etc. (if applicable including using buttons to click on or social media), but may also consist in merely listening to and taking place solely in real time.

To the extent that transactions are not provided by an establishment benefitting under § 4 no. 20 UStG, the option to use a reduced VAT rate in line with § 12 (2) no. 7 (a) UStG for the sale of a digital entry to a livestream offering exists.

Commission of services
Particularly in the area of music events (concerts, orchestra performances, among others) it may happen that the digital provision of these (as a livestream

or as a recording) is also offered via an external event portal or other third party. In this case whether a commission of services within the meaning of § 3 (11) or (11a) UStG exists must be examined.

This is the case if a trader other than the event organizer is involved in the provision of the service (provision of livestreaming offerings or recordings) and is trading in their own name, but for the account of others (§ 3 (11) UStG), or a trader is involved in providing the services (provision of livestreaming offerings or recordings) via a telecommunications network, an interface or a portal (§ 3 (11a) UStG).

If the livestreaming offering takes place as part of the commission of services in line with § 3 (11) or (11a) UStG, the supply-related features of the VAT exemption or reduction must be applied to the services supplied to the contractor and to the service provided by them. If a trader procures services for third parties, for which the VAT exemption set out in § 4 no. 20 (a) UStG applies, the procurement services provided to the customer in line with § 4 no. 20 (a) UStG are also exempt from VAT. Personal features of those participating in the supply chain must continue to be included separately for every supply within a commission of services in the evaluation from a VAT law perspective.

Scope of services and basis of assessment in the case of service combinations

Whether, in addition to the provision of a livestream (with and without the possibility to interact), the services offered in the form of a recording that can be retrieved by the user at a time of their choosing, should be considered to be an independent service to be evaluated separately or – together with the provision of the livestream – it is a single supply, should be determined in line with the general regulations on the uniformity of a supply. According to these, the nature of the transaction in question must be identified in order to determine if the trader is providing several independent main services to the recipient of the supply, or a single supply. According to the current case law, the perspective of an average consumer is relevant. The economic substance of the services provided is crucial. In general, every supply must be considered to be a separate supply. The following principles apply in order to distinguish which it is:

Single supply of its own kind

In the case of the combined provision of a livestream (with and without the possibility to interact) and a recording that can be retrieved by the user at a later time of their choosing, this is a supply of its own kind, which is overall subject to the general rate of VAT. There is no question of the fee being divided.

Independent supplies

If, on the other hand, the provision of a livestream (with and without the possibility to interact) is offered in return for the payment of a separate fee or, a surcharge for a recording that can be retrieved by the user at a later time of their choosing, two independent supplies exist, which must be evaluated separately.

If independent main supplies exist, which must be taxed at different rates and a single payment is charged, the fee must be divided among the individual supplies.

To the extent that the retrieval of a recording is only possible through the payment of a surcharge in addition to the fee that must be paid regardless, the amounts for the supplies can be clearly allocated, so that no division needs to be carried out.

Application to other online service offerings

The statements above also apply to other online service offerings, for example in the areas of education and health. According to these statements, supplies directly serving the purposes of schooling and education, under the additional requirements of § 4 no. 21 and no. 22 UStG are exempt from VAT if the teaching service is provided as part of an interactive live-streaming offering. Online appointments via video streaming with a direct exchange between the patient and doctor are, according to the additional requirements of § 4 no. 14 UStG exempt, as supplies of curative treatments, from VAT.

Application provisions

The principles set out in this guidance must be applied in all open cases according to the BMF.

For supplies of services effected before 1 July 2024, no objection will be raised if the parties, with regard to the place of supply, assumed VAT exemptions in line with § 4 no. 14, 20, 21 and 22 (a) UStG or the reduced VAT rate in line with § 12 (2) no. 7 (a) a UStG consistent with other principles.

Please note:

1. due to corona, online participation has increased at certain events in addition to the physical presence of participants. In addition, many organizers offer the option of participating in the event via live stream or by selling pre-produced content that can be viewed later at a time of your choice. If it is a combination offer (live stream with individual retrieval of the recording), the

BMF is of the opinion that a complex service of its own kind exists and the standard tax rate is to be applied. If, on the other hand, a recording is provided for a separate fee, it is a further independent service to be assessed separately in addition to the live stream, for which the total fee must be divided accordingly. The BMF has provided these requirements with a very short transitional provision until 30 June 2024 only.

2 The BMF guidance can be positive for influencers because they usually provide their services as part of service commissions via platforms (B2B turnover). If the influencers have previously paid German VAT, they may be able to have this refunded by the tax office. In this respect, domestic platforms must check whether they qualify as an intermediate link in a supply chain (see CJEU ruling of 28 February 2023 C-695/20).

3. the VAT Directive has a new local provision from 1 January 2025. According to this, services to consumers that are transmitted virtually via streaming or other means are to be taxed in the country of residence of the recipient (use) (see Art. 54 para. 1 subpara. 2 of the new VAT Directive). This will also be implemented in the JStG 2024.

IN BRIEF

Input VAT refund procedure in the EU

CJEU, ruling of 16 May 2024 – case C-746/22 - Slovenské Energetické Strojárne

The CJEU has ruled on the input VAT refund procedure in the EU in line with the Directive 2008/9/EC as follows:

Art. 23 (2) (1) of the Directive 2008/9/EC, in light of the principles of VAT neutrality and effectiveness, must be interpreted to mean that

it precludes national legislation under which a taxable person who has submitted an application for a refund of VAT is prohibited from providing, at the stage of the complaint before a tax authority of the second instance, additional information, within the meaning of Art. 20 of that Directive, requested by the tax authority of the first instance, and which that taxable person did not provide to the latter authority within the one-month period laid down in Art. 20 (2) of the Directive, that period not constituting a limitation period.

Art. 23 of the Directive 2008/9/EC must be interpreted to mean that

it does not preclude national legislation under which a tax authority must discontinue the VAT refund procedure where the taxable person has not provided, within the time limit, additional information requested by that authority under Art. 20 of that Directive and where, in the absence of that information, the VAT refund application cannot be processed, provided that the discontinuation decision is regarded as a decision refusing that refund application, within the meaning of Art. 23 (1) of that Directive, and that it can be the subject of an appeal meeting the requirements provided for in Art. 23 (2) (1) of that Directive.

Allocation of the moving supply of goods in the case of chain transactions, broken transportation

BFH, resolution of 22 November 2023, XI R 1/20

With regard to the question of the allocation of the moving supply of goods in the case of a chain transaction, the BFH has ruled as follows:

1. In the case of a chain transaction with three participants (X, Y and Z) and two supplies of goods (X to Y, and Y to Z) the first purchaser (Y) must not necessarily become a joined party in a legal dispute of the first supplier (X) with its tax office in accordance with § 60 (3) sent. 1 Fiscal Court Rules.

2. For the question of which supply of goods within this type of chain transaction the movement of goods must be allocated to, within the context of an overall evaluation of the individual case under the old law, it would be relevant whether the first purchaser (Y) had transferred to the second purchaser (Z), the right to dispose of the goods in Germany (cf. BFH ruling of 25 February 2015 - XI R 15/14, Federal Tax Gazette II 2023, 514, basic principle 2).

3. A properly issued and signed bill of lading does not, according to Art. 9 (1) CMR, provide proof as to whether the first purchaser (Y) has transferred to the second purchaser (Z) the right to dispose of the item as an owner in Germany.

4. Whether a “broken” shipment exists, does not play any role in the question of whether the first purchaser (Y) has transferred to the second purchaser (Z) the right to dispose of the goods as an owner in Germany.

Please note:
The BFH ruling deals with the allocation of the movement of goods in the context of a cross-border chain transaction according to the old regulation of

§ 3 para. 6 sentence 6 UStG, which applied until 31.12.2019.

In the case in dispute, the goods were first transported from Germany to a warehouse in the Netherlands and from there to Kazakhstan (broken transportation?). The BFH ruled that, irrespective of whether there was a broken transport, the power of disposal had already been transferred to the last acquirer Z in Germany, so that X could not claim an intra-Community, tax-free supply in Germany. Even in the case of a "broken" shipment, it depends on whether the first acquirer has already transferred the power of disposal to the second acquirer in Germany. The place of supply from X to Y was in Germany in accordance with § 3 (7) sentence 2 UStG. Art. 36a of the VAT Directive is unlikely to change the view of the BFH because it only expressly regulates the intermediary who transports or dispatches the goods and does not provide any indication of how to proceed in the case of a broken transport.

Draft bill on the Annual Tax Act 2024 (JStG 2024) published

On 17 May 2024, the BMF published the draft bill for the JStG 2024. It includes numerous changes to VAT (www.bundesfinanzfinisterium.de).

Listen in: VAT podcast "VAT to go"

On 1 January 2025, e-invoicing will be gradually introduced in Germany. The obligation affects almost all domestic B2B transactions.

Our tax experts Kathrin Feil, Nancy Schanda and Christopher Böcker talk about this in the special edition of our VAT podcast "VAT to go" - listen to it on Spotify and SoundCloud.

FROM AROUND THE WORLD

TaxNewsFlash Indirect Tax
KPMG articles on indirect tax from around the world

You can find the following articles here.

14 May - KPMG report: Impact of Brazil's indirect tax reform proposal on nonresidents

9 May - EU: New draft of EU VAT reform (VAT in the Digital Age (ViDA))

6 May - Brazil: Draft regulations to introduce new dual VAT regime

2 May - Estonia: Draft legislation proposes mandatory issuance of e-invoice by sellers upon request of clients

29 Apr - EU: Working paper on VAT treatment of “crypto art”

26 Apr - Poland: New deadlines for e-invoicing mandate announced

22 Apr - Austria: Guidance on VAT exemption for board remuneration; other recent direct and indirect tax developments

11 Apr - Italy: Scope of self-disclosure regime extended to certain VAT-registered companies and deadline extended to 31 May 2024

EVENTS

Tax Tech Practice Forum

18 June 2024 at the Design Offices Cologne Mediapark

Technology solutions in practical use

More and more companies are using technology solutions to deal with tax issues, from SAP S/4HANA implementation to process automation using generative AI. As part of the Tax Tech Practice Forum, company representatives will report on successfully implemented applications. Among other things, in-house developments based on low-code solutions, AI applications and other solutions from various providers will be presented.

The practical forum is an event organized by KPMG in cooperation with the “Institut für Digitalisierung im Steuerrecht e.V.”. In addition to many exciting practical cases, it also offers space for questions, discussions and exchange.

Further information on registration can be found here.

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International Network of KPMG
If you would like to know more about international VAT issues please visit our homepage KPMG International**. Further on this website you can subscribe to TaxNewsFlash Indirect Tax and TaxNewsFlash Trade & Customs which contain news from all over the world on these topics. We would be glad to assist you in collaboration with our KPMG network in your worldwide VAT activities.

Our homepage / LinkedIn
You can also get up-to-date information via our homepage and our LinkedIn account Indirect Tax Services.

* Trade & Customs

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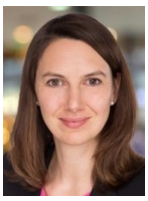
Imprint

Issuer***

KPMG AG
Wirtschaftsprüfungsgesellschaft
THE SQUAIRE, Am Flughafen
60549 Frankfurt/Main

*** Responsible according to German Law (§ 7 (2) Berliner PresseG)

Editor



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