KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

December 2024 – January 2025

NEWS FROM THE CJEU

Online purchase of goods subject to excise duty; transport arrangement

CJEU, judgment of December 19, 2024 - Case C-596/23 - Pohjanri

The judgment concerns the interpretation of Article 36(1) of Directive 2008/118/EC concerning the general arrangements for excise duty. It concerns the question of whether a seller is considered to be liable for excise duty in the Member State of destination if he instructs the buyer on his website to use a specific transport company.

Facts of the case

B-UG, a German company, sold alcoholic beverages to private individuals residing in Finland, among others, via a website. For the transportation of the beverages from Germany to Finland, the respective private individual could commission a transport company that was suggested to them during the ordering process on the B-UG website.

The Finnish tax authorities demanded that B-UG pay excise duty and a tax fine, as the company or a person acting for its account had shipped the beverages to Finland.

B-UG lodged an appeal, which was rejected, and brought an action before the Helsinki Administrative Court.

The Helsinki Administrative Court referred the question to the Court of Justice for a preliminary ruling on the interpretation of Article 36(1) of Directive 2008/118/EC.

From the reasons for the decision

The CJEU ruled that Article 36(1) of Directive 2008/118 must be interpreted as meaning that excise goods are to be regarded as "dispatched or transported directly or indirectly by or on behalf of the seller to another Member State" if the seller directs the buyer's choice of carrier. This also applies if the buyer concludes a separate contract with the transport company.

Please note:
The case law of the CJEU was issued on transport responsibility for excisable goods in accordance with Directive 208/118/EC. However, the VAT regulations on distance selling contain comparable formulations.

In this respect, advertising on the website for a transport company is already an indirect participation for

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VAT purposes and is decisive for the application of the German distance selling regulation in Section 3c UStG (see Art. 5a of the VAT Regulation, Section 3c.1 para. 2 sentence 3 in conjunction with Section 3c.18 para. 4 sentence 8 UStAE). Section 3.18 para. 4 sentence 8 UStAE).

VAT on the termination of the contract by the purchaser of the work

CJEU, judgment of November 28, 2024 - Case C-622/23 - rhtb

The Austrian request for a preliminary ruling concerned the taxability of services in the case of unfulfilled contracts for work. The Austrian Supreme Court referred a question to the CJEU regarding the VAT treatment of payments that were still to be made by the client to the contractor following the premature termination of a contract for work initiated by the client. The question was as follows: Is Art. 2 para. 1 lit. (c) of the VAT Directive in conjunction with Article 73 of that directive be interpreted as meaning that the amount which a customer for work owes to the contractor is subject to VAT even if the work is not (fully) performed but the contractor was prepared to perform the work and was prevented from doing so by circumstances on the part of the customer for work (for example, the cancellation of the work)?

Facts of the case

In March 2018, rhtb (contractor, hereinafter: A) and Parkring (client) concluded a contract for work for the construction of a real estate project with a contract fee of over EUR 5 million. After work began, Parkring informed A in June 2018 that it no longer wished to continue with the project. In December 2018, A therefore submitted a final invoice (contractual claim due to unjustified cancellation of the work) and took into account his saved expenses and the fact that he had already fulfilled a small part of the contract in his claim of around EUR 1.5 million. As Parkring did not make this payment, A brought an action for payment of around EUR 1.5 million including VAT and based its claim on Section 1168 (1) of the Austrian Civil Code. Due to the VAT issue in civil proceedings, the Supreme Court then referred the matter to the CJEU for a preliminary ruling.

From the reasons for the decision

Article 2(1) lit. c of the VAT Directive must be interpreted as meaning that the amount which is contractually due because the recipient of a service has terminated a contract validly concluded for the supply of that service subject to VAT - the performance of which the supplier had begun **and which he was prepared to complete** - must be regarded as consideration for a supply of services for consideration. As regards the direct link between the service provided to the customer and the consideration actually received, the Court held that the consideration for the price paid on conclusion of a contract for the supply of services consists of the resulting right of the customer to benefit from the performance of the obligations arising from that contract, irrespective of whether he exercises that right. Thus, the service provider already provides that service as soon as it enables the customer to make use of that service, so that the existence of the direct link referred to is not affected by the fact that the customer does not exercise that right. In this respect, the CJEU refers to its judgment of June 11, 2020, Vodafone Portugal, C-43/19, para. 32).

In the present case, the service provider had not only made it possible for the recipient to benefit from the service, but, as it had already started the agreed work, it had actually provided part of this service and was prepared to complete it. From an economic point of view, the amount to be paid pursuant to Paragraph 1168(1) of the ABGB not only reflects the remuneration contractually agreed for the services in question, less the amounts saved, so that there is a direct link between the amount at issue in the main proceedings and the service provided, but also ensures the service provider a contractual minimum remuneration.

Please note:
The CJEU refers to its ruling of July 18, 2007 (C-277/05) on the distinction between taxable remuneration for a willingness to perform and non-taxable compensation, according to which a deposit of 40% of the room price to be paid when reserving a hotel room, which remains with the hotel in the event that the trip is not taken, is non-taxable compensation. The room reservation was not an independent, determinable service and the deposit was only a lump sum compensation. In contrast to this, there was already a customizable service because the service provider had been prepared to perform it in full. In this respect, it is important to note that in its decision, the CJEU expressly takes up the referring court's finding that the contractor was prepared to perform the service in full.

However, the CJEU overlooks the fact that at no time was it possible for the recipient to receive the completed work. The situation is different if the customer pays the full airfare (see CJEU, judgment of December 23, 2015 - C-250/14, Air France) and the remuneration is paid for the readiness to perform. At that time, the CJEU rightly stated that the price paid when purchasing the ticket consists of the passenger's right to benefit from the performance of the obligations arising from the contract of carriage, irrespective of whether he exercises that right, since the airline already provides the service as soon as it enables the passenger to make use of the services in question. This is a serious difference to the case of a contract for work and services, in which the contractor does not yet enable the customer to make use of something because he has not yet provided a consumable service. The theoretical readiness to perform the remaining work has not yet materialized and leads to the CJEU subjecting the mere conclusion of a contract for work and services to VAT.

As the provision of Section 1168 (1) of the Austrian General Civil Code (ABGB) largely corresponds to the German provision of Section 648 sentence 2 BGB, it can be assumed that the administration and the Federal Court of Justice will have to deal with the CJEU ruling.

Until now, the contractor's claim has not been subject to VAT in certain cases, both according to civil case law (BGH of 22.11.2007 - VII ZR 83/05) and in the opinion of the tax authorities (Section 1.3 para. 5 UStAE). According to sec. 1.3 para. 5 UStAE, the remuneration that the entrepreneur receives after termination or contractual dissolution of a contract for work and materials without having delivered the materials provided or the partially completed work to the customer is not remuneration for a supply (see also the more recent BFH ruling of August 26, 2021 - V R 13/19 on the termination of an architect contract)

Estimation of the extent of the threat to tax revenue

Opinion of the Advocate General of December 19, 2024 - Case C-794/23 - Finanzamt Österreich II

In its ruling of 8 December 2022 - Case C-378/21 - Finanzamt Österreich (P GmbH/Indoor Spielplatz), the CJEU ruled that an invoice to final consumers does not give rise to a tax liability if the VAT amount is too high and there is no risk to tax revenue because the supplies were made exclusively to final consumers who are not entitled to deduct input VAT. This issue has now been referred to the CJEU again by the next instance (Court of Appeal).

In the context of case C-794/23, the question was raised as to the criteria under EU law for an estimate of the apportionment if invoices were issued not only to final consumers not entitled to deduct input VAT but also to taxable persons entitled to deduct input VAT.

Facts of the case

P GmbH operates an indoor playground and issued invoices with an excessively high VAT rate in 2019. The tax office refused to refund the overpaid tax as the invoices had not been corrected. Following the CJEU ruling of 8 December 2022, which assumed that the recipients of the services were only final consumers not entitled to deduct input VAT, the Austrian Federal Fiscal Court estimated that 0.5% of the invoices were issued to taxable persons entitled to deduct input VAT, which would lead to a tax liability in this respect.

The Austrian Administrative Court has now asked the CJEU for criteria for such an estimate.

From the Opinion

Art. 203 of the VAT Directive states that VAT is payable by any person who shows this tax on an invoice.

The Advocate General notes that Article 203 of the VAT Directive standardizes strict liability. This provision therefore covers all invoices to taxable persons, irrespective of whether they are entitled to deduct input VAT or not. However, invoices to non-taxable persons are not covered by Art. 203 of the VAT Directive.

The Advocate General further states that there is no "infectious effect" to the effect that all invoices - including those issued to non-taxable persons - fall within the scope of Art. 203 of the VAT Directive simply because it cannot be ruled out that invoices were also issued to taxable persons in individual cases.

With regard to a possible apportionment by way of estimation, the Advocate General first explains that the VAT Directive - although not for this case, but for other constellations - provides for apportionment options and also allows certain minor circumstances to be disregarded.

In a case such as the present one, the determination of the

apportionment criterion is therefore, in the absence of specific provisions in the VAT Directive, in principle a question of the burden of presentation and proof in the tax proceedings of the respective Member State. However, the type of service and the typical customer base must be taken into account in order to comply with the principle of neutrality and the principle of proportionality.

According to the Advocate General, it is also conceivable to work with a so-called safety margin in order to exclude any risk to tax revenue. With regard to its amount, however, it would then have to be taken into account who had caused the risk to be hedged.

Please note:
It remains to be seen whether the CJEU will follow the Advocate General's reasoning. A decision can be expected in the first half of 2025.

NEWS FROM THE BFH

Transfer of going concern

BFH, judgment of September 25, 2024, XI R 19/22

In its ruling of September 25, 2024, XI R 19/22, the BFH came to the conclusion that water supply systems that were built on third-party land can be supplied to the owner or a third party as part of an exchange of services relevant under VAT law.

Furthermore, it is clarified that the city acts sustainably and thus entrepreneurially in connection with the acquisition of water supply systems from the old supplier and the onward delivery of these to a new supplier.

In addition, the BFH ruled that in the case of an admissible transitory acquisition, it is sufficient for the applicability of the provision of sec. 1 para. 1a UStG that the requirements of a transfer of going concern are met by the last purchaser.

Facts of the case

The plaintiff, a municipal GmbH, is the controlling company of G-GmbH, which supplied water supply systems to the city of S. The city of S transferred these facilities directly to the O-Verband, which took over the water supply for the city of S.

G-GmbH initially issued an invoice to the city of S with VAT shown, but then applied to the tax office for approval to correct the invoice, as it considered it to be a non-taxable transfer going concern. The tax office rejected this, as the city of S was not an entrepreneur.

From the reasons for the decision

The lower tax court (Finanzgericht, FG) correctly determined that the takeover of the water supply facilities was to be regarded as a supply within the meaning of Section 3 (1) UStG for VAT purposes. G-GmbH had obtained the power of disposal over the water supply facilities and was therefore able to supply them, irrespective of whether the city of S was the owner under civil law.

However, the BFH overturned the decision of the tax court to the extent that it assumed that the City of S was not an entrepreneur. Instead, the BFH found that the City of S was to be regarded as an entrepreneur as it had acquired and resold the water supply facilities on a long-term basis. The City of S did not just act on a one-off basis, as it assumed the obligation to reacquire the facilities at the end of the contract and to resell them or operate them itself; this was to be regarded as a sustainable activity.

The BFH also ruled that the intermediate acquirer does not have to be an entrepreneur for a transfer of going concern within the meaning of sec. 1 para. 1a of the German VAT Act to be deemed to have taken place in the case of a step acquisition. It is sufficient that the last acquirer is an entrepreneur and continues the economic activity. This is in line with the purpose of the regulation to facilitate transfers of companies and to avoid excessive tax burdens.

The BFH therefore ruled that the plaintiff had submitted an effective application for consent to the correction of the invoice. G-GmbH had transferred the entire water supply in the town of S to the O-Verband as the ultimate purchaser by way of a partial transfer. The necessary elimination of the risk to the tax revenue was achieved by assigning the reimbursement claim to O-Verband.

Please note:
The BFH addressed three points of dispute in this case: The supply of buildings on third-party land in the case of disputed ownership under civil law, the entrepreneurial status of the public sector (which, in the opinion of the BFH, was given here contrary to the opinion of the FA and the FG) and the requirements for the existence of a transfer of going concern in cases of through acquisition.

The BFH stated that the exchange of services for VAT purposes does not depend on who is the owner under civil law, so that buildings on third-party land can also be supplied to the land owner or third parties. In addition, the BFH has determined that in the case of a through acquisition, it is sufficient that the requirements for the transfer of going concern (supply to another entrepreneur for their business) are met by the last acquirer (beneficiary).

Finally, it should be noted that another case on the transfer of going concern is currently pending before the Federal Fiscal Court on a similar issue (case no. V R 3/23). In this case, the Munich tax court ruled as follows in its judgment of February 2, 2023 (case no. 14 K 2328/20): "A non-taxable transfer of going concern (Section 1 (1a) UStG) exists if a business is sold to two persons in equal shares (co-ownership share = partial assets) and the acquirers lease their independent part of the business (co-ownership share) to a third party (here: GmbH), which ultimately continues a sufficiently similar business with the partial assets of the seller. The principles developed for chain transfers are also applicable to a transfer of use to third parties." It remains to be seen whether the BFH will follow the view of the tax court.

Correction of a shift in sales over the course of the year

BFH, judgment of August 29, 2024, V R 19/22

The BFH ruling concerns the correction of a shift in turnover across years in accordance with the provisions of the AO.

Facts of the case

The plaintiff was subject to debit taxation in the year in dispute. It did not pay tax on the services it provided in the period in which the services were rendered, but only in the period in which the remuneration was received. Payment claims based on services already rendered that had not yet been fulfilled by the end of the year were recorded by the plaintiff in a remuneration account, which showed the amount of the services rendered but not yet taxed.

At the end of 2012, the remuneration balance amounted to around EUR 32,000. The plaintiff only recognized the resulting tax claim in the advance returns submitted in 2013 (year in dispute) with the respective receipt. At the end of 2013, there was a remuneration balance of around EUR 102,000, which the plaintiff again incorrectly only paid tax on in 2014.

As part of an external audit, the tax office objected to the late taxation and amended the assessments for the years 2013 to 2015. The 2013 amendment assessment also included the remuneration balance of around EUR 102,000 existing at the end of 2013.

With reference to Section 177 para. 1 AO (correction of material errors), the plaintiff applied to reduce the assessment basis for 2013 - corresponding to the increase made - by the remuneration balance of around EUR 32,000 existing at the end of 2012, as this should have already been taxed by the plaintiff in 2012. The tax office rejected the application as a corresponding increase in VAT for 2012 was no longer possible due to the statute of limitations.

The action was unsuccessful before the Mecklenburg-Vorpommern Fiscal Court. The plaintiff's appeal against this decision was successful.

From the reasons for the decision

If an entrepreneur (debit taxpayer) does not tax its sales for the period in which the service is provided, but only for the period in which the payment is subsequently received, it can, according to the BFH, claim that the tax assessment for the tax period in which the payment is received is unlawful.

With § 174 AO (conflicting tax assessment), there is a statutory provision for the case to be assessed here, which precludes the assumption of a loophole and thus an analogous application of § 20 para. 3 UStG.

In the case in dispute, the tax office had issued the tax assessment notice at issue here on the basis of a legally erroneous assessment of certain facts (taxation of the services already performed in 2012 only upon receipt of the remuneration in the following year), which was to be amended in its favor on the basis of the application submitted by the plaintiff (no taxation of the services performed in 2012 in the year in dispute 2013). Therefore, the correct tax consequences could also be drawn from the facts of the case for 2012 by subsequently amending this tax assessment notice, whereby this was possible under the conditions set out in Section 174 (4) sentences 3 and 4 AO even if the assessment period for

the 2012 VAT had already expired.

The plaintiff is therefore entitled to the requested amendment of the 2013 VAT assessment pursuant to Section 172 para. 1 sentence 1 no. 2 letter a half-sentence 1 alternative 2 AO, according to which a tax assessment, insofar as it has not been issued provisionally or subject to review, may only be revoked or amended if the taxpayer's application is granted on the merits. The unlawfulness of the assessment notice for 2013 also means that the tax office's discretion, which exists in principle, is reduced to zero in accordance with Section 172 para. 1 sentence 1 no. 2 letter a AO.

Please note:
Contrary to the opinion of the tax office, according to the Federal Fiscal Court, the amendment block of Section 173 (2) AO after an external audit does not exclude a correction based on provisions other than Section 173 (1) AO - and thus according to Section 172 (1) sentence 1 no. 2 letter a AO, which is applicable here.

In consulting practice, the topic of accrual accounting is repeatedly encountered, whether in a situation comparable to the case decided by the BFH or where input tax amounts are claimed late. This ruling may help to prevent a tax assessment based on an accrual deferral to the detriment of companies. In this context, please note the one-year deadline in § 174 para. 4 sentence 3 AO. Due to a period shift, reference should also be made to the judgment of the Cologne tax court dated October 8, 2024 - 8 K 1735/23 (see here under the heading "From the tax courts" at the end of the newsletter).

Organschaft (Tax group) and withdrawal taxation in the case of sovereign activity of the controlling company

BFH, judgment of August 29, 2024, V R 14/24

Following a referral to the CJEU, the BFH comes to the following conclusion:

The tax liability of the controlling company pursuant to Section 2 para. 2 no. 2 UStG is in conformity with EU law.

Payments made by a controlled company to the controlling company are not taxable.

The non-taxability of supplies for consideration does not lead to a withdrawal tax pursuant to Section 3 (9a) No. 2 UStG.

Facts of the case

The plaintiff, a foundation under public law and sponsor of a university, provided services for consideration, some of which were tax-free. At the same time, the plaintiff performed sovereign tasks. It assumed that it was the controlling company of U-GmbH, which provided cleaning services for it, whereby part of the areas to be cleaned were attributable to the plaintiff's sovereign area. The tax office considered these services to be non-taxable internal sales but increased the VAT due to the gratuitous transfer of value, insofar as the services were provided for the sovereign area.

From the reasons for the decision

The tax office's appeal against the ruling of the Lower Saxony Fiscal Court dated October 16, 2019, is dismissed as unfounded.

A tax group exists in which the plaintiff is the controlling company and U-GmbH is the tax group subsidiary. The tax liability of the plaintiff resulting from § 2 para. 2 no. 2 UStG is in conformity with Union law.

In accordance with the previous case law of the BFH, supplies for consideration within the tax group are not taxable. This also applies if - as in this case - the tax group parent receiving the service would be liable for VAT as the recipient of the service in the absence of a tax group but would not be entitled to the corresponding input VAT deduction (e.g. due to use for sovereign/extra-business purposes, i.e. for non-economic activities in the narrower sense).

There was also no withdrawal taxation, as the services - even if they were not taxable as internal transactions - were provided in return for payment. This applies even though the services were purchased for the public sector, as this is also part of the tax group.

Please note:
According to the Federal Fiscal Court, supplies for consideration by a controlled company to its controlling company are also non-taxable if the controlling company uses them for sovereign purposes, i.e. for non-business purposes (non-economic activities in the narrower sense according to sec. 2.3 para. 1a sentence 4 UStAE).

If the requirements for a tax group are met, the controlled company does not carry out its commercial or professional activity independently, without the use of the service provided by the controlled company by the controlling company being relevant. The statutory

treatment of the parts of the business of the parent company and the controlled company as one company does not result in any restriction of the controlled company's lack of independence (in this respect, the BFH ruling of 20.08.2009 - case no. V R 30/06).

In this context, the BFH points out that it was not necessary to decide what legal consequences would arise if - unlike in the case in dispute - the controlling company provides services for consideration to the controlled company (and not the controlled company to the controlling company), which the latter uses for purposes that lie outside its business.

Management services of a group practice

BFH, decision of September 4, 2024, XI R 37/21

The BFH comes to the conclusion that a group practice that acts externally in pursuit of a common purpose is an entrepreneur.

A group practice of doctors that receives services for the management of its own business does not necessarily provide management services to its members.

A group practice that provides cleaning services to its members and purchases tax-free services from subcontractors can invoke the VAT exemption of Art. 132 para. 1 lit. f of the VAT Directive for tax periods prior to the introduction of sec. 4 no. 29 of the German VAT Act if it only demands the exact reimbursement of the joint costs and there is no risk of distortion of competition.

Facts of the case

The plaintiff, a joint practice, was established for the joint use of practice premises, facilities and staff. The management was the responsibility of one of the partners (A), who received remuneration for this. The group practice provided cleaning services and purchased tax-free services from subcontractors in order to pass these on to its members. The tax office (FA) considered the group practice to be an entrepreneur and issued a VAT assessment against which the plaintiff filed a complaint.

From the reasons for the decision

The tax court (Finanzgericht, FG) had correctly decided that the plaintiff's services were tax-exempt. The joint practice could rely on the tax exemption of Art. 132 (1) (f) of the VAT Directive, as it only demanded the exact reimbursement of the joint costs and there was no risk of distortion of competition.

By obtaining management services from A, plaintiff does not provide A or B with such an advantage. In this respect, if there were taxable supplies by A to the plaintiff, it was the recipient and not the supplier. A does not conduct the business of B, but the business of the plaintiff. Otherwise, every company that receives management services would also provide management services to its shareholders, which in the case of A would turn the service relationship, insofar as it exists, into its opposite; A would be both the service provider to the plaintiff and at the same time a proportionate service recipient from it for the same service

Please note:
The BFH has once again clarified who is the supplier and recipient in the case of management services. The FA was of the opinion that the fact that a member of a group practice (A) manages the business of the group practice automatically means that the group practice (plaintiff) also manages the business of the member or its other members. The BFH rejected this in the case in dispute. A group practice consisting of doctors that receives services for the management of its own business does not necessarily provide management services to its members at the same time.

NEWS FROM THE FINANCIAL COURTS

Direct claim against the tax office if the service provider has no assets

Fiscal Court Lower Saxony, judgment of August 15, 2024 - 5 K 40/22, appeal lodged, case reference at the BFH: XI R 27/24

In the present case, the performing GmbH had been deleted and dissolved in the meantime due to a lack of assets, and the statute of limitations had also expired for the reimbursement claim, which the defendant tax office (accessorily) invoked. In its decision, the court came to the conclusion that the deletion due to a lack of assets on the part of the service provider established a direct claim and that the tax office could not invoke the statute of limitations regardless of whether the service provider had raised this defense itself if the

direct claim already existed for another reason.

Please note:
The direct claim goes back to a decision of the CJEU from 2007 (CJEU ruling of March 15, 2007, C-35/05 Reemtsma Cigarettenfabriken), confirmed by the CJEU ruling of September 5, 2024 (C-83/23), in which it was determined, however, that there is no refund within the framework of a direct claim if the supplier has already received the VAT.

According to the case law of the BFH (ruling of June 30, 2015, case no. VII R 30/14), the direct claim can be asserted by way of an equitable measure in accordance with Sections 163 and 227 AO. The tax authorities generally recognize the existence of the direct claim and set out criteria for granting it in a BMF letter dated 12 April 2022 (III C 2 - S 7358/20/10001, BStBl I 2022, 652 = SIS 22 06 04).

VAT treatment of advance payments

Cologne Fiscal Court, judgment of October 8, 2024 - 8 K 1735/23

Contrary to the opinion of the tax office, the Cologne Fiscal Court came to the conclusion that the VAT for advance payments arises at the end of the pre-notification period in which the payment was received. Subsequent consideration in a later year is not permitted.

Facts of the case

The plaintiff, a company that is taxed on the basis of agreed fees, concluded a contract for work and services with a GmbH in 2013. As part of this contract, several partial invoices were issued and payments received between 2013 and 2015. The GmbH was not entitled to deduct input VAT. The VAT for partial invoices 1 to 6 was collected in 2013 and 2014, while partial invoices 7 to 9 and the final invoice were issued in 2015. The tax office changed the VAT assessment for 2015 and subsequently took the VAT for 2013 and 2014 into account in 2015.

From the reasons for the decision

The court ruled that the VAT for advance invoices 1 to 6 had already arisen in 2013 and 2014 and could not be taken into account retrospectively in 2015. According to the statutory provisions, the tax for advance payments arises at the end of the pre-notification period in which the payment was received. Retrospective recognition in a later year is not permitted.

It was also determined that the GmbH could not be considered a tax debtor in accordance with the provisions of Section 13b UStG, as it did not use the purchased services to provide its own construction services.

The plaintiff also did not owe any additional tax pursuant to § 14c UStG, as there was no risk to the tax revenue due to the GmbH's inability to deduct input tax.

Please note:
The case was based on the special situation that the parties involved had initially assumed the application of Section 13b UStG, but this had been denied by the case law of the BFH in its ruling of 22.08.2013 (V R 37/10) on property developers. The tax authorities had therefore ruled that the correction of the net advance payment invoices could be made with the final invoice and was only then taxable. The Cologne tax court disagreed with this ruling.

NEWS FROM THE BMF

Input VAT deduction for credit institutions

BMF, letter dated December 9, 2024 - III C 2 - S 7306/19/10003 :004

The Federal Ministry of Finance begins by explaining the general principles for determining the deductible input tax amounts.

The BMF then comments on the allocation of input VAT amounts at credit institutions. A distinction is made between the business and non-business areas. There is then a segmentation and other options for the allocation of input services purchased for business purposes to output transactions. Furthermore, the allocation criteria for credit institutions are presented. Finally, the BMF addresses cross-border corporate structures in the banking industry.

The principles of the BMF letter are to be applied in all open cases.

It is not objectionable if an entrepreneur refers to the principles in the letter from the BMF to the banking associations dated April 12, 2005 (IV A 5-S7306-5/05) in the period up to December 31, 2025, insofar as its requirements are met and this does not conflict with other BMF letters published in the meantime.

Listen in now: VAT podcast "VAT to go"

In the eighth episode of our "VAT to go" podcast series, Kathrin Feil, Partner and Head of Indirect Tax at KPMG, and Rainer Weymüller, former presiding judge at the Munich Fiscal Court and external consultant at KPMG, talk about retroactive invoice corrections and intra-Community triangular transactions. Find out which five details are important on invoices, which pitfalls companies should avoid and how the relevant case law influences practice. Listen now on Spotify and SoundCloud.

AROUND THE WORLD

TaxNewsFlash Indirect Tax

KPMG articles on indirect taxes from around the world

You can find the following and other articles here.

17 Jan - Spain: VAT filings due in January and February 2025

16 Jan - Poland: VAT exemption for online platform assisting banking customers; VAT treatment of medical services consortium; VAT exemption for currency exchanges

16 Jan - UAE: VAT exemption does not apply to cryptocurrency mining

15 Jan - Czech Republic: Amendments in VAT law

10 Jan - Cyprus: Zero VAT rate on basic goods through 2025

8 Jan - Czech Republic: Changes in taxation of immovable property in 2025

6 Jan - Proposed mandatory use of SAF-T report

6 Jan - Slovakia: Proposed mandatory e-invoicing from January 1, 2027

2 Jan - Argentina: Suspension of withholding tax and VAT on certain imported goods

2 Jan - Vietnam: Reduced VAT rate on certain goods and services

EVENTS

VAT 2025: Hybrid annual conference

on May 22, 2025

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With our experts Michaela Neumeyer, Bastian Liegmann and Christian Wotjak, you will learn how the VAT system works and the meaning of basic terms such as "taxability" and "tax liability", deepen your knowledge of VAT in the international movement of goods and deal with other VAT aspects such as the classification of other services and the right to deduct input tax as well as correct invoicing.

Register now and watch it as a webcast on demand from anywhere and at any time - as a package with all three parts or bookable individually here.

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