KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

April 2025

LEGISLATION

Coalition agreement between CDU, CSU and SPD

Around six weeks after the federal elections, the leaders of the CDU, CSU and SPD have agreed on a coalition agreement. The ministries have also been divided between the parties. The Federal Ministry of Finance is earmarked for the SPD.

The coalition agreement contains a large number of tax policy measures. However, all measures in the coalition agreement are subject to financing.

Below we summarize the main VAT policy plans of the governing coalition:

- Permanent VAT reduction for food in restaurants to 7 percent as of 1 January 2026
- Creation of sectoral exemptions for research, including in the VAT Act.
- Conversion of import sales tax to a clearing model to relieve companies of bureaucracy.
- Measures to curb VAT fraud.
- Extensive VAT exemption for donations in kind to charitable organizations.

The CSU Executive Board adopted the coalition agreement on April 12, 2025. The CDU approved the coalition agreement at a small party conference on April 28, 2025. The members of the SPD voted in favor of the coalition agreement in the members' survey by April 29, 2025.
Friedrich Merz (CDU) could therefore be elected as the new Federal Chancellor in the Bundestag at the beginning of May - currently planned for May 6.

NEWS FROM THE CJEU

Taxation of transactions carried out via an app store

Advocate General, Opinion of 10 April 2025 - Case C-101/24 - XYRALITY

The Advocate General's Opinion concerns a number of questions from the Federal Fiscal Court to the CJEU on the taxation of transactions carried out via an app store.

Facts of the case

The German company XYRALITY (hereinafter: U), which distributes game apps, used an app store X from Ireland in the years 2012 to 2014, which provided the apps to customers free of charge; however, customers could purchase benefits for the respective game in return for payment. According to the agreement with X, U was the seller of the products. X was to

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offer the products on behalf of U, for which X received a commission. After the purchase process, the end customer received an order confirmation from X with U's consent, stating that purchases had been made from U in the app store and stating the gross price and German VAT. U then declared services to X (service commission, Section 3 (11) UStG). The Fiscal Authority held that the relevant provision of Art. 9a of the VAT Implementing Regulation was only applicable from 1 January 2015. In addition, there was a risk of final non-taxation of the sales because Ireland assumed that Germany had a right of taxation, which was in line with the order confirmations. X had pointed out in the terms of use that the contract was not concluded with it, but with the app provider. Only billing and payment take place via X. According to the objective horizon of the recipient, the contractual partner and service provider is the app provider vis-à-vis end customers.

However, the tax court then followed U. According to Section 3a para. 2 UStG and Section 3 para. 9 and para. 11 UStG, the place of supply of U's supplies was abroad. The BFH had doubts about the interpretation of EU law and referred the following questions to the CJEU in its decision of 23 August 2023 - XI R 10/20

(1) In circumstances such as those in the main proceedings, in which (U) a German taxable person (developer) supplied a service by electronic means to non-taxable persons (end customers) established in Community territory via an appstore of an Irish taxable person (X) before 1 January 2015, is Art. 28 of the VAT Directive, with the result that the Irish taxable person is treated as if it had received those services from the developer and supplied them to the end customers, because the app store only named the developer as the supplier in the order confirmations issued to the end customers and showed German VAT?

(2) If the answer to question 1 is in the affirmative: Is the place of supply of the service deemed to have been provided by the developer to the Appstore pursuant to Article 28 of the VAT Directive in Ireland pursuant to Article 44 of the VAT Directive or in Germany pursuant to Article 45 of the VAT Directive?

3. if, according to the answer to questions 1 and 2, the developer has not provided any services in Germany: Does the developer have a tax liability for German VAT under Article 203 of the VAT Directive because the Appstore, as agreed, named it as the supplier in its order confirmations sent by email to the end customers and showed German VAT even though the end customers are not entitled to deduct input tax?

From the Opinion

The Advocate General argues that Art. 28 of the VAT Directive is applicable to the provision of apps via an app store before 1 January 2015. The app store is to be regarded as a supplier who receives the services from the developer and provides them to the end customer.

The place of supply of the fictitious service provided by the developer to the app store is to be determined in accordance with Art. 44 of the VAT Directive, as it is a service to a taxable person. The place is the registered office of the app store, in this case Ireland.

Art. 203 of the VAT Directive is not applicable if the VAT is shown in order confirmations to non-taxable end customers. There is no risk to the tax revenue as the end customers have no right to deduct input VAT.

Please note

The Advocate General's Opinion is of great importance in practice because the Federal Fiscal Court wanted to extend the previous principles of the Service Commission and restrict the elimination of the risk to tax revenue under Section 14c UStG. The Advocate General opposed this on both points. In this respect, it was irrelevant that Art. 9a of the VAT Implementing Regulation only came into force after the taxable periods (question 1).

The BFH's question regarding the place of supply in the case of a service commission was of particular importance. According to the previous view, the place of supply of a service commission is determined by the place of business of the commission agent if the basic rule pursuant to sec. 3a para. 2 of the German VAT Act applies. In its preliminary ruling, the BFH considered it possible that the place of supply is determined by the place where the commission agent provides its service to the end customer (question 2)

The Advocate General disagreed with this and focused on the specific service relationships. If the service provider does not act itself, but through an "intermediary" who acts on its account but in its own name, there is no direct contact with the recipients of the services, so that the calculation and payment of VAT could be considerably more difficult and could be

subject to significant errors. Therefore, the determination of the place of supply in accordance with Art. 44 of the VAT Directive (Section 3a para. 2 UStG) and the principle of the place of destination remain applicable.

Finally, there was the issue of a tax liability under Section 14c UStG (Art. 203 of the VAT Directive) due to a tax statement in order confirmations (question 3). The Advocate General denied this because there was no risk to tax revenue in the case of "invoices" to final consumers.

He also had doubts as to whether order confirmations were invoices at all or who issued these "invoices". Since the contractor acted in his own name and had control over the essential aspects of the service, it could be assumed that it was the contractor who confirmed receipt and fulfillment of the order in his own name. Art. 203 of the Directive does not stipulate that the issuer of the invoice must be the actual service provider; it could be "any person".

The Advocate General has thus provided important points for the judgment of the CJEU, all of which contradict the opinion of the BFH.

Sale of immovable property

CJEU, judgment of 3 April 2025 - Case C-213/24 - Grzera

The CJEU dealt with the question of whether the sale of agricultural land by spouses living in a legal community of property regime is considered an economic activity within the meaning of the VAT Directive and is therefore subject to VAT. In addition, the question arose as to whether the Polish tax office was right to issue notices to each spouse or whether the spouses are jointly deemed to be taxable persons and therefore only one notice should have been issued.

Facts of the case

In 1989, E. T. and her husband W. T. became the owners of several agricultural plots of land in Poland as part of a contract for the free transfer of an agricultural business to a successor by E. T.'s parents. These fell under the statutory community of property of the T. spouses.

In 2011, the couple decided to sell these plots and concluded an agency agreement for this purpose with the company B. A. Z. (hereinafter referred to as the managing agent). Among other things, the agency had the task of organizing the division of the land into smaller plots and taking the necessary steps to change the entries in the land register and cadastre accordingly, to change the designation of the plots in the local land-use plan (from agricultural land to building land), to develop the land through utility lines, to advertise the plots to potential buyers and to prepare the necessary documents for the conclusion of the notarial contracts for the sale to the purchasers of the plots. The spouses authorized the managing agent to act on their behalf with the various competent Polish authorities.

The plots of land were sold between 2017 and 2021. According to the tax administration, these sales constituted an economic activity subject to VAT, as the plots in question, which were agricultural land, had been converted into building land prior to their sale and an additional plot had been acquired to create internal and access roads to the various plots created. It therefore subjected E. T. to VAT on these sales and issued a corresponding assessment in respect of W. T. E. T. and W. T. are of the opinion that the sales fall under the mere management of private assets, so that they are not subject to VAT.

From the reasons for the decision

The CJEU comes to the conclusion that a person who sells an area originally belonging to his private property and commissions a commercial entrepreneur to prepare the sale can be regarded as a taxable person if the entrepreneur, as the person's authorized representative, takes active marketing steps similar to those of a producer, trader or service provider.

Please note:

1. Under German law, the sale of land or parts of land is tax-free. According to § 4 no. 9 letter a UStG, sales that fall under the Real Estate Transfer Tax Act are tax-exempt. Under certain conditions, a waiver of the tax exemption pursuant to Section 9 (1) UStG may be considered. The waiver must be declared in the contract to be notarized in accordance with § 9 para. 3 sentence 2 UStG.

2 The case of the married couple, who received several agricultural properties from their parents as successors free of charge, once again makes us sit up and take notice. This is because the case shows once again that, according to the CJEU, one can become a taxable person or entrepreneur relatively quickly when disposing of private assets. In this case, the

spouses engaged a "managing agent" who undertook several activities on their behalf prior to the sale of the agricultural land. In this respect, the Court of Justice has previously ruled that active steps to market land, using similar means as a producer, trader or service provider, can lead to classification as a taxable person. Such initiatives would not normally take place in the context of the management of private assets, but rather in the context of an activity carried out for the sustainable generation of income. They could therefore be classified as economic (judgments of September 15, 2011, Słaby and others, C-180/10 and C-181/10, of July 9, 2015, Trgovina Prizma, C-331/14, and of 20 January 2021, AJFP Sibiu and DGRFP Braşov, C-655/19)

(3) With regard to the second problem, namely whether in the case in dispute a decision should not only have been issued to the spouses as a legal community, the CJEU refers to the relevant appearance vis-à-vis third parties or the question of whether the community bears the economic risk of the sale, which is for the national court to review.

In Germany, Section 2 (1) UStG was amended as of 1 January 2023. According to this, an entrepreneur is anyone who carries out a commercial or professional activity, regardless of whether they have legal capacity under other regulations. The change in the law was a reaction to the case law of the BFH, which stated in its ruling of November 22, 2018 - V R 65/17 - that only the community members themselves were entrepreneurs due to the lack of entrepreneurial capacity of the community. The recipient of services was only each individual community member according to their shareholding. The BFH based this on the fact that the community did not have legal capacity under civil law

It remains to be seen whether the BFH will stick to its opinion from 2018 due to the change in the law in 2023. In its decision of 28 August 2023 - V B 44/22 - the BFH states that in future it will depend on whether it can be concluded from this new regulation that a fractional community provides services as an entrepreneur even though it is not in a position to carry out an economic activity in its own name, for its own account and on its own responsibility and, moreover, cannot bear any economic risk associated with this activity.

Removal from the VAT register

CJEU, judgment of 3 April 2025 - Case C-164/24 - Cityland

This is a request for a preliminary ruling from the Administrative Court of Veliko Tarnovo, Bulgaria, regarding the removal of Cityland from the VAT register due to repeated breaches of tax obligations, some of which involved very small amounts. The court asked whether this national regulation was compatible with the VAT Directive and the principles of proportionality and legal certainty.

From the reasons for the decision

The CJEU states that although Member States may take measures to ensure tax collection and combat tax evasion, these measures must be proportionate and compatible with the principles of legal certainty.

Proportionality: A sanction such as removal from the VAT register must take into account the nature and seriousness of the infringements and must not be imposed without a comprehensive examination of the taxable person's conduct.

Legal certainty: The taxable person's tax situation must not remain open indefinitely. Removal from the register without a valid VAT identification number could significantly affect the taxable person's business activities and is therefore not compatible with the principle of legal certainty.

It follows that the first subparagraph of Article 213(1) and Article 273 of the VAT Directive and the principles of legal certainty and proportionality preclude national legislation under which the competent tax authority is authorized to remove a taxable person from the VAT register without fully investigating the nature of the infringements committed and the conduct of the taxable person.

Transfer pricing and VAT

CJEU, Opinion of the Advocate General of 3 April 2025 - Case C-726/23 - Arcomet

Multinational companies that use intra-group services face challenges due to different taxation systems. The OECD has developed transfer pricing guidelines to avoid double taxation and promote international trade activities. These guidelines are based on the arm's length principle, which ensures that transactions between associated companies are carried out at arm's length.

Facts of the case

Arcomet Romania is part of the Arcomet Group, a globally operating, independent group in the

crane rental sector. While Arcomet Romania purchases or rents cranes for subsequent resale or rental to its customers, Arcomet Belgium selects suppliers for its subsidiaries, including Arcomet Romania, and negotiates the terms of the contracts with them. However, the purchase and rental contracts are concluded between Arcomet Romania and its suppliers or customers.

A transfer pricing study carried out in December 2010 between Arcomet Belgium and its subsidiaries revealed that the subsidiaries had to report a certain operating profit margin in accordance with the transfer pricing regulations at market level. An agreement between Arcomet Belgium and Arcomet Romania stipulated that Arcomet Belgium would issue an annual adjustment invoice if the margin was exceeded.

In 2011, 2012 and 2013, Arcomet Romania received three invoices without VAT from Arcomet Belgium, which Arcomet Belgium ultimately reported as relating to services, after making a higher profit than the margin provided for.

Arcomet Romania identified the first two invoices as intra-Community acquisitions of services for which it applied the reverse charge procedure, but considered that the third invoice was issued in the context of transactions outside the scope of VAT.

The Romanian Fiscal Authority held that Arcomed Romania was not entitled to deduct input VAT because neither the provision of the invoiced services nor their necessity for the purposes of the taxable transactions had been proven due to a lack of supporting documents. In addition, interest and administrative penalties had to be paid due to the unjustified input VAT deduction.

Assessment of the Advocate General

The assessment of whether transfer prices are subject to VAT must be decided on a case-by-case basis.

1. it must therefore be examined whether the conditions laid down in Art. 2 para. 1 lit. c of the VAT Directive are fulfilled, i.e. whether there are services which a taxable person has supplied as such in the territory of a Member State for consideration. In this case, there is a contract which provides for a supply and remuneration.

The service was also determinable, since Arcomet Belgium not only negotiated the terms of the contracts to be concluded by its subsidiary but also carried out a number of tasks that were part of Arcomet Romania's economic life.

Even if the amount of the remuneration itself is undetermined, the modalities of this remuneration are defined in the contract with very precise criteria and as such are free of uncertainties. Thus, the amount of the remuneration for the services provided by Arcomet Belgium to Arcomet Romania was fully determinable from the time this agreement was concluded.

The fact that the invoice is issued by Arcomet Romania in the case of a certain margin (less than -0.71%) cannot call this analysis into question.

2. the Romanian administration's second argument remained, by which it had denied Arcomed Romania the input tax deduction from the services provided by Arcomed Belgium. Arcomed Romania had failed to prove that the services had been used for the purposes of taxable transactions.

Here, the Advocate General agreed with the administration and stated that the tax authorities can request documents other than the invoice from the taxable person in order to prove the use of the services for taxed transactions. This must be done in accordance with the principle of proportionality and be suitable to prove the existence of the services and their use

Please note:
The tax authorities regularly check for which outgoing turnover the incoming services are used. It is therefore surprising that the Romanian company was not able to allocate the incoming turnover to the relevant crane sales or crane rentals or to treat them as overheads (general expenses). The CJEU recently issued a similar ruling on transfer prices and the requirements for input VAT deduction (judgment of 12 December 2024, C-527/23). In addition, the CJEU will soon have to deal with transfer pricing and the relationship to the minimum basis of assessment under Art. 80 of the VAT Directive in Case C-808/23 (see Opinion of Advocate General Kokott of 6 March 2025: Newsletter March 2025).

For the sake of completeness, reference should also be made here to the view of the VAT Expert Group (VEG N° 071 REV2).

NEWS FROM THE BFH

On the exchange of services by a fitness studio in lockdown

BFH, judgment of 13 November 2024, XI R 5/23

Membership fees collected during an officially ordered closure period of a fitness studio are, in the case of promised free additional months of membership, remuneration (advance payments) for taxable and taxable partial supplies. In this context, a (continued) willingness to perform on the part of the entrepreneur is also to be regarded as a (performed) service for consideration. The extent to which the service is actually used is irrelevant

Facts of the case

In 2020, the plaintiff operated a fitness studio in Schleswig-Holstein, which was closed from March 17 to May 17 due to the state ordinance to combat COVID-19. During this time, membership fees continued to be collected by direct debit. The plaintiff offered its members the option of replacing the closure period at the end of their membership with contribution-free months. In addition, free online live courses and other offers were provided. Only a few members reclaimed their contributions, while the majority continued to make payments. The plaintiff did not declare any sales for the months of closure, whereas the tax office considered the payments to be taxable advance payments and increased the VAT accordingly.

From the reasons for the decision

The tax court had wrongly assumed that the contributions paid were not remuneration for a taxable supply.

The services owed by the plaintiff within the scope of the membership agreements during the term of the respective membership in his fitness studio are **partial supplies** within the meaning of Section 13 para. 1 no. 1 letter a sentence 3 UStG. With the granted opportunities to use the facilities in the plaintiff's gym, there were economically divisible services that were to be provided continuously and in periods of one month each within the framework of the 12 or 24-month terms of the membership, which were to be assessed as a continuing obligation, and which gave rise to successive invoices or payments within the meaning of Art. 64 of the VAT Directive.

The contributions were also remuneration for a taxable service because the plaintiff had provided its members with a consumable benefit in the form of the promised bonus months for the payments made in such a way that they could continue to train free of charge for the period during which the gym had to close after the expiry of the membership.

The plaintiff had collected the fees on the basis of the continuing membership as a legal relationship. At that time, he had promised the members in notices that (in addition to the various alternative offers) the period in which they could not train in his gym would be replaced free of charge at the end of their membership.

The membership fees collected, which relate to the months of the officially ordered closure of his fitness studio, were therefore to be regarded as a **taxable advance payment** within the meaning of § 13 para. 1 no. 1 letter a sentence 4 UStG for the bonus months still to be granted subsequently. Irrespective of whether the continued payment of the membership fees through their unchallenged collection only contradicts the economic reality out of solidarity, convenience or due to a legal error, the exchange of services under VAT law follows from the economic connection between the consumable benefit granted by the plaintiff, which the recipient receives for the consideration paid by him, and not from the assessment of the transaction under civil law. Such an exchange of services, which took place within the framework of the contract for the membership in the plaintiff's fitness studio, exists in the case in dispute with regard to the bonus months.

The fact that only 85 of the 761 members who continued to pay subsequently actually made use of the offer of bonus months does not prevent the existence of a supply for consideration for the other members as well. A supply for consideration within the meaning of Section 1 para. 1 no. 1 UStG, Art. 2 para. 1 lit. c VAT Directive, a (continued) willingness to perform on the part of the trader is also to be regarded as a supply for consideration, so that the extent of the actual use of the supply is irrelevant. If the recipient of the supply has the possibility to make use of a certain supply, a taxable supply is deemed to exist even if the recipient of the supply does not actually make use of it, does not want to make use of it or cannot make use of it.

Please note:
In its ruling of the same day (XI R 36/22), the BFH also decided on

the appeal against the ruling of the Schleswig-Holstein tax court of 16 November 2022, 4 K 41/22, with reference to the above-mentioned ruling and agreed with the tax court that the membership fees received were consideration for taxable and taxable services. The tax court assessed the voluntary continued payment of the contributions as a taxable transaction due to a "VAT-relevant" connection with the services provided during the continuing obligation. It considered the fact that the services were not available in the form offered to be irrelevant for VAT purposes.

VAT treatment of bonus payments in the so-called central settlement business

BFH, judgment of 23 October 2024, XI R 6/22

The ruling deals with the VAT classification of bonus payments in the centralized settlement business.

Facts of the case

The plaintiff, an entrepreneur in the sanitary sector, was a shareholder of X-GmbH & Co. KG, which provided services such as del credere and central settlement for its shareholders. X negotiated terms with contract suppliers, including bonuses, which it passed on to the shareholders. The plaintiff reduced its input VAT deduction base by bonuses received, which the tax office later corrected. The claimant argued that the bonuses were not directly related to the deliveries of goods and therefore no input VAT adjustment was necessary.

From the reasons for the decision

The BFH ruled that the bonuses that the plaintiff received from X did not reduce the taxable amount of the sales of goods carried out by the contract suppliers to the plaintiff. X was not part of the supply chain, and the bonuses were not to be regarded as consideration for the supplies of goods. The input tax adjustment should therefore be reversed.

The decision is based on the amended case law of the Federal Fiscal Court and the VAT Directive. Discounts granted outside the supply chain do not lead to an adjustment of the input VAT deduction. The CJEU has clarified that discounts granted by an intermediary do not reduce the taxable amount for the intermediary service.

Please note:

1. the judgment sets aside the previous decision and refers the matter to the Münster Fiscal Court for reconsideration.

The tax court must examine whether the bonuses are to be assessed as remuneration for other taxable services. There could be a benefit from X to the plaintiff or vice versa, which is influenced by the bonuses.

2 The BFH has already ruled on this issue in its judgment of 29 August 2024 - V R 20/23. According to this ruling, bonus payments made by a central settlement agent to its members do not reduce the assessment basis of the services provided by the central settlement agent to the suppliers.

Input VAT deduction of the insolvency administrator - cessation of business

BFH, decision of 23 October 2024, XI R 8/22

If the insolvency debtor has ceased its entrepreneurial activity, the deduction of input VAT for the insolvency administrator's services must be decided on the basis of the insolvency debtor's previous entrepreneurial activity (following BFH, judgment of 23 November 2023, V R 3/22, BStBl. II 2024, 501).

Facts of the case

In 2006, insolvency proceedings were opened over the assets of Q GmbH and the plaintiff was appointed insolvency administrator. In the years prior to the opening of insolvency proceedings, the debtor - the object of its business was the construction of turnkey residential buildings, partly for its own account and partly for the account of third parties - generated between 97% and 46% VAT-exempt output sales.

The plaintiff handled the existing construction projects. In addition, he claimed input tax from the invoice he issued to the debtor in 2018 in his capacity as insolvency administrator over the debtor's assets. The defendant tax office only granted this to the extent that the plaintiff had carried out VAT-triggering utilization activities for the debtor.

In the opinion of the tax authorities, input tax should be apportioned here, as tax-exempt sales of around €940,000 and taxable sales of only around €44,000 were carried out as part of the insolvency proceedings.

As part of the proceedings before the Münster tax court, the parties agreed that 45% of the receivables registered in the schedule were directly and immediately related to taxable transactions carried out by the insolvency debtor. The Münster tax court subsequently upheld the claim (Münster tax court, judgment of 20 January 2022 - 5 K 1179/19 U). The tax office lodged an appeal against this, but the Federal Fiscal Court rejected it as unfounded.

From the reasons for the decision

The Federal Fiscal Court ruled by way of an order in accordance with Section 126a FGO because it unanimously considered the appeal to be unfounded.

Pursuant to sec. 15 para. 2 sentence 1 no. 1 UStG, input VAT deduction is excluded if input turnover is used for tax-free supplies. If this input tax-damaging use is only partial, an apportionment is to be made in accordance with Section 15 (4) UStG.

In the insolvency proceedings of a debtor who had already ceased his business (economic) activity prior to the opening of insolvency proceedings, it is appropriate to decide on the input VAT deduction from the insolvency administrator's invoice on the basis of the previous business activity. However, the situation may be different if the insolvency administrator continues the business and the insolvency administrator has not carried out any significant realization activities.

In the case in dispute, the activities of the insolvency administrator were aimed at liquidating and realizing the assets to satisfy the creditors, not at preserving the company.

The continuation of the company is to be assumed in particular if - unlike in the case in dispute a deviating provision is made in an insolvency plan in accordance with § 1 sentence 1 half-sentence 2 InsO, in particular to maintain the company.

The input tax deduction was justified as there was a direct and immediate connection between the services provided by the insolvency administrator and the claims registered in the insolvency proceedings. These claims had arisen from the previous economic activity of the insolvency debtor.

Please note:
1. the decision clarifies that the input VAT deduction for the insolvency administrator in insolvency proceedings must in principle relate to the former entrepreneurial activity and not to his realization acts carried out after the opening of insolvency proceedings .

2. another case (XI R 23/22) on this issue is pending before the BFH, in which the following question is being clarified: Is the taxpayer's liability for outstanding VAT debts from legal acts of the insolvency administrator after the conclusion of the insolvency proceedings limited to the assets formerly belonging to the insolvency estate (previous instance: Düsseldorf Fiscal Court - 4 K 1280/21 AO)?

Input VAT deduction from insolvency administrator services in the event of continuation of the business by the insolvency administrator

BFH, judgment of 23 October 2024, XI R 20/22

If the insolvency administrator continues the insolvency debtor's business as part of his administration, the input VAT allocation is not necessarily based on the principles of the BFH ruling of April 15, 2015 - V R 44/14 -, BStBl II 2015, 679. A proper estimate to which the entrepreneur is entitled for the input VAT allocation is also to be seen in the fact that the total income generated by the insolvency administrator during his administration period is divided according to the proportion of taxable and tax-exempt or non-economic turnover.

Facts of the case

The plaintiff, appointed as insolvency administrator, continued the insolvency debtor's business during the insolvency proceedings without carrying out any significant liquidation activities. The insolvency debtor was self-employed as an IT administrator and generated sales during the insolvency. The plaintiff claimed input tax deductions, which the tax office only partially recognized, as it allocated the input tax according to the registered private and business insolvency claims. The Cologne Fiscal Court ruled in favor of the plaintiff by apportioning the input VAT according to the overall activity during the insolvency administration. The tax office lodged an appeal, but this was rejected by the Federal Fiscal Court.

From the reasons for the decision

The Federal Fiscal Court ruled that in the case of a going concern by the insolvency administrator, input tax could be apportioned according to the overall activity of the company during the insolvency administration if no significant realization activities were carried out.

The input tax deduction was justified as the service provided by the insolvency administrator was directly linked to the continued economic activity of the insolvency debtor. The service had been used exclusively for the insolvency debtor's company, which was in insolvency.

Since the plaintiff had not carried out any significant acts of exploitation, the input tax was not to be apportioned according to the registered receivables, but according to the total turnover in the tax period.

Please note:
The Federal Fiscal Court confirmed the decision of the Cologne Fiscal Court of 25 May 2022 (9 K 1278/19) that the input tax allocation in the case of a going concern by the insolvency administrator can be based on the overall activity during the insolvency administration. The tax office's appeal was rejected as unfounded.

Listen in now: VAT podcast "VAT to go" - Episode 9 - VAT on compensation payments

Whether and when VAT is due on compensation payments is often a contentious issue. This is shown by numerous rulings by various courts on this issue. In the latest episode of the "VAT to go" podcast, Kathrin Feil, Head of Indirect Tax at KPMG, and Rainer Weymüller, former presiding judge at the Munich Fiscal Court and VAT expert, discuss how the courts justify their rulings, what regulations there are in the German VAT Application Decree (UStAE) and what the definition of "exchange of services" has to do with the decision as to whether VAT is due on compensation payments or not. Listen now: **VAT to go - the VAT podcast: Episode 9 - VAT on compensation payments - when does it apply? - KPMG on air | Podcast on Spotify**

FROM ALL OVER THE WORLD

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

You can find the following and other articles here.

10 Apr - Poland: New rules for keeping books of account

2 Apr - Slovakia: Input VAT deduction limited to 50% on purchase of motor vehicles and motorcycles

27 Mar - Slovakia: FAQs on financial transaction tax

20 Mar - UK: Consultation on future of oil and gas taxations

19 Mar - UAE: Accreditation process for e-invoicing

18 Mar - Denmark: VAT amendments relating to copyright licensing

18 Mar - Slovenia: Revised law project mandating e-invoicing

13 Mar - Kazakhstan: Proposed increase in standard VAT rate

EVENTS

VAT 2025: Hybrid annual conference

on 22 May 2025

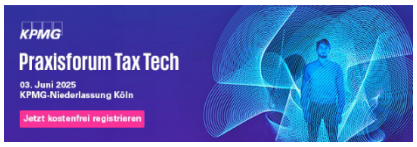
This year, we will once again focus on the effects of current case law on day-to-day practice, share our experiences with you in relation to chain transactions and give you valuable insights into how the tax authorities assess this. The interfaces between wage/sales tax and customs/sales tax as well as the perennial issue of e-invoicing will of course not be neglected either. We will then discuss the implementation and digitalization of these and other topics in the company. As always, you can expect exciting speakers from tax authorities, academia and practice - and of course we have also planned plenty of time for you to actively network. Detailed information on the agenda and our speakers can be found on our event page, so take a look and **register now**. We look forward to your participation!

Basics of value added tax

Bring your knowledge of VAT up to date - with our three-part training series "Basics of VAT" - practical and clear.

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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