KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

May 2025

LEGISLATION

Council agrees position on the directive on simplifying the charging of taxes on imports

Council, press release of 13 May 2025

On 13 May 2025, the Council announced that an agreement had been reached on the position of the Member States (the so-called "general approach") on the Directive on the VAT rules for distance sales of imported goods and import VAT.

The directive aims to improve the collection of VAT on imported goods by making suppliers liable for the VAT paid on imports, which is likely to encourage them to use the VAT import one-stop shop (IOSS).

Import one-stop shop (IOSS)

Foreign traders or platforms will be made liable for import VAT and VAT on the distance sales of imported goods in the Member State of final destination of the goods. This will encourage use of the IOSS, as foreign traders or platforms that do not use it will need to be registered in each Member State.

The IOSS serves as a point of contact for importers of goods from third countries into the European Union. It aims to simplify the declaration and payment of VAT when importing goods into the EU, as it is only necessary to register in one member state even when making sales throughout the EU.

As the IOSS enables VAT payments up front (when the consumer purchases the item) rather than at the border, it protects Member States' tax revenues and increases VAT compliance for imports. It also shifts the burden for VAT collection from customers to platforms, something which the Council also hopes to achieve for customs duties in its Union Customs Code reform.

Next steps

The directive is subject to a special legislative procedure and agreement on the draft law requires unanimity within the Council. The European Parliament will be consulted on the agreed text and asked to deliver its opinion. The text will then need to be formally adopted by the Council before being published in the EU´s Official Journal and entering into force.

Background

On 17 May 2023, the European Commission published a customs

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reform package consisting of three legislative proposals, one of which was the Council Directive on VAT rules for distance sales of imported goods and import VAT. Among other things, the original proposal contained provisions on removing the customs exemption for goods worth up to a threshold of €150.

However, the Council decided to discuss these initial provisions only in the context of the ongoing customs reform negotiations. The text of the directive, on which the Member States have reached a general approach, therefore focuses on measures to encourage use of the IOSS.

NEWS FROM THE CJEU

Tax liability of joint and several liability

CJEU, judgment of 30 April 2025 - Case C-278/24 - Genzyński

The CJEU ruling concerns the regulation on the tax liability of joint and several liability in Poland.

Facts of the case

This case concerned the joint and several liability of the former chairman of the board of directors of a Polish company for its VAT debts. The company had not fulfilled its VAT obligations and the Polish tax authorities held the former chairman, P. K., liable for these debts. The latter argued that there were no legal grounds for opening insolvency proceedings as the company had only one creditor, namely the tax authorities.

From the reasons for the decision

The CJEU examined whether the Polish regulation is compatible with EU law, in particular the VAT Directive and the principles of proportionality, legal certainty and equal treatment.

Proportionality: The regulation must not go beyond what is necessary to ensure tax collection. Strict liability would be disproportionate. However, the Polish regulation makes it possible to prove that the failure to file for insolvency proceedings was not due to the fault of the board member.

Equal treatment: The regulation should not create any unjustified unequal treatment between members of the board of directors of companies with one or more creditors. The mere fact that the tax authorities are the only creditor does not justify an automatic exemption from liability.

Legal certainty: The regulation must be clear and predictable. The Polish regulation fulfills these requirements, as it clearly defines the conditions for liability and possible exemption.

Right to property: The regulation must not impair the essence of the right to property. Liability is limited to the amount of tax debts for which enforcement has been unsuccessful.

The CJEU ruled that the Polish regulation was compatible with EU law, provided that the member of the Board of Directors had the opportunity to effectively prove that he had exercised due care in the management of the business.

Please note:
The national rule on joint and several liability is compatible with Union law if it allows the persons concerned to prove their innocence and the rule is clear and proportionate. The mere existence of a single creditor (tax authorities) is not sufficient to justify an automatic exemption from liability.

Tax exemption for small consignments

CJEU, judgment of 8 May 2025 - Case C-405/24–L

The CJEU ruling concerns the tax exemption of small consignments from third countries to the EU.

Facts of the case

This case concerns the interpretation of the VAT Directive and Directive 2006/79/EC with regard to the VAT exemption for small non-commercial consignments imported from third countries. L, a Polish company, requested an individual interpretation to clarify whether the importation of such consignments into Poland is exempt from VAT if the recipient is established in another EU Member State. The Polish tax authority rejected the exemption as it only applied to recipients in the importing Member State.

From the reasons for the decision

The CJEU examined whether the Polish regulation is compatible with the EU directives:

Wording of the directives: Article 143(1)(b) of the VAT Directive and Article 1 of Directive 2006/79 refer to consignments to private individuals in a "Member State" without specifying the Member State of importation. This indicates that the exemption applies to consignments to private individuals in any Member State.

Systematic interpretation: Directive 2006/79 and its predecessor regulations do not intend to restrict the VAT exemption based on the place of residence of the recipient. The exemption should apply to all small consignments of a non-commercial nature, irrespective of the destination within the EU.

Purpose of the regulation: The aim of the exemption is to take into account the emotional nature and low value of consignments that have already been taxed in the country of dispatch. The place of residence of the recipient should have no influence on the exemption.

The CJEU ruled that the Polish regulation, which limits the tax exemption to recipients in the importing Member State, violates EU directives. The exemption must also apply to consignments to recipients in other Member States.

Please note:
EU directives require that small consignments of a non-commercial nature from third countries are exempt from VAT, regardless of whether the recipient is established in the importing Member State or another Member State. According to the CJEU, the Polish regulation that restricts this is not compatible with EU law.

Taxability of contingency fees

CJEU, Opinion of 8 May 2025 - Case C-744/23–Ziakov

The Advocate General's Opinion concerns the taxability of contingency fees.

Facts of the case

This case concerns the question of whether the provision of legal services free of charge by a lawyer who, in the event of success, receives a statutory minimum fee from the unsuccessful party, is a taxable transaction within the meaning of the VAT Directive. The plaintiff, represented by a law firm, had received legal services free of charge because he was in financial difficulties. Following the successful conclusion of the proceedings, the defendant was ordered to pay the minimum fee, but without VAT. The law firm applied for VAT to be added to the fee.

Legal assessment of the Advocate General

The Advocate General analyzes whether the service is to be considered to be for consideration within the meaning of the VAT Directive.

Remuneration of the service: A service is deemed to be for consideration if a taxable person receives a consideration for the provision of a consumable benefit, regardless of whether this is paid by the recipient or a third party. In the present case, the losing party pays the fee, which qualifies the service as being for consideration.

Uncertainty of the consideration: Uncertainty about the amount of the consideration or the time of payment does not affect the chargeability of the service. The VAT Directive provides that the taxable amount includes all payments received or to be received by the supplier, including payments from third parties.

Legal relationship and legal basis: The statutory entitlement to a lawyer's fee in the event of success creates a sufficiently direct connection between the payment and the service provided. The legal relationship does not have to be exclusively contractual; it can also be established by law.

Comparison with the Baštová and Tolsma cases: The Advocate General clarifies that the uncertainty about the remuneration in the Baštová case was not decisive for the remuneration, but that the prize money was not regarded as remuneration for a service. In the Tolsma case, the payment for altruistic motives was not considered taxable, which is not the case here.

Please note:
The Advocate General proposes that the service provided by the law firm should be regarded as a taxable transaction, as it receives a statutory fee from the unsuccessful party in the event of success. VAT should be charged on the fee actually received, irrespective of the uncertainty of payment or the fact that a third party pays.

Taxability of subsidies in public transport

CJEU, judgment of 8 May 2025 - Case C-615/23–P

The CJEU ruling concerns the taxability of public transport subsidies in Poland.

Facts of the case

In this case, the question was whether a flat-rate compensation payment made by a local authority to a company to cover losses from the provision of public passenger transport services is included in the company's VAT taxable amount. P, a company in the

passenger transport sector, received compensation from the local authority because the revenue from the sale of tickets did not cover its costs. The tax authorities took the view that this payment was part of the taxable base, which P disputed.

From the reasons for the decision

The CJEU had to decide whether the compensation was to be regarded as a "subsidy directly linked to the price" within the meaning of Art. 73 of the VAT Directive.

Direct link: A subsidy is only taxable if it is directly linked to the price of a specific transaction. The compensation must benefit the recipient of the service and influence the price of the service. In the present case, the compensation is not paid specifically for the provision of a service to a particular recipient and has no influence on the price of the tickets.

Calculation of the compensation: The compensation was calculated as a flat rate and independently of the actual use of the services. It served to cover losses and not to directly subsidize the fare.

Comparison with other cases: The CJEU found that the facts of the case were not comparable with cases in which subsidies were directly linked to the number of recipients or the service provided.

The CJEU ruled that the lump-sum compensation payment was not included in the taxable base as it could not be regarded as consideration for the services provided.

Please note:
Art. 73 of the VAT Directive must be interpreted as meaning that a flat-rate compensation payment to cover losses from public passenger transport services is not included in the taxable amount of the company. The supply is not directly linked to the price of the services provided and is therefore not subject to VAT.

The issue of subsidies is reminiscent of the problem of the taxability of grants. Here, the Federal Ministry of Finance changed its view in its letter dated 11 June 2024 (BStBl. I 2024, 979) (see sec. 10.2 para. 2 sentences 3 and 4 UStAE) and now states that the distinction between a consideration for a supply to the payer and a non-taxable genuine grant must be made primarily according to the person receiving the grant and the purpose of the grant. Accordingly, in the case of grants, the decisive factor is whether the grantor is to receive a specific benefit or whether the activity of the grant recipient is not intended for the payer as the recipient of the benefit, whereby the purpose pursued by the payer serves as an indication (see BFH ruling of 18 November 2021 - V R 17/20, BStBl II 2024, 492). Insofar as input supplies are financed by subsidies, these can also be relevant for input VAT deduction. According to case law, subsidies may also be taken into account when applying a turnover key insofar as they reflect the scope of the non-taxable (non-economic) activity of an entrepreneur. This is intended to ensure that input VAT is only deducted for the portion that is attributable to the transactions eligible for deduction.

So-called 'tooling' - taxable or tax-exempt supply of the tool remaining on site

Advocate General Kokott, Opinion of 22 May 2025, C-234/24

The Opinion concerns tooling and manufacturing processes aimed at producing tools, dies or moulds for the production of parts (so-called tooling).

Facts of the case

Brose SK is a company founded in Slovakia, registered and domiciled there for VAT purposes. It manufactures window controls, door modules and lifting devices for automobiles. It purchases components for its activities from IME Bulgaria (based in Bulgaria), which are the subject of intra-Community supplies.

Brose DE, a company registered in Germany, is affiliated with Brose SK under corporate law and is registered for VAT purposes in both Germany and Bulgaria. Brose DE commissioned IME Bulgaria to manufacture special tools for the production of the components to be supplied to Brose SK.

After execution of the order, IME Bulgaria issued a net invoice plus Bulgarian VAT to Brose DE on 14 May 2020, stating the Bulgarian VAT identification number of the recipient (Brose DE). The special tools became the property of Brose DE, but remained with the supplier, IME Bulgaria, which uses them to manufacture products solely for Brose SK.

On 7 June 2021, Brose DE transferred the special tools to Brose SK and issued the disputed invoice for the sale of tooling equipment plus Bulgarian VAT.

On 10 March 2022, Brose SK applied for a refund of the Bulgarian VAT shown on the invoice and paid for the period from 1 January to 31 December 2021. Brose SK's application was rejected by decision, as the supply of the special tools and the supply of the components constituted an economically inseparable supply, with the special tools losing their economic significance after the components had been manufactured. Since Brose SK had received the components manufactured by IME Bulgaria as an intra-Community supply, the supply of the special tools was also to be treated as such. In this respect, Brose DE was neither the recipient nor the actual user of the special tools manufactured. Brose DE was only a formal owner, as IME Bulgaria used the special tools for the manufacture of the end products and exercised dominion and control over them.

Brose SK challenged this in court. In the second instance, the Bulgarian court referred the dispute to the CJEU for a preliminary ruling. The court held that there was an artificial separation between the supply of components for Brose SK's activities and the supply of special tools. However, it was neither alleged nor proven that the sole purpose of splitting the supplies was to obtain a tax advantage for Brose SK, nor what that advantage might be.

Legal assessment

The Advocate General shares the opinion of Brose SK.

In the Wilo Salmson France case, which concerned a comparable tooling case in Romania, it was - as the Commission and Brose SK rightly emphasize - undisputed that the supply of the tools, which were used in Romania for the production of components and remained there, was a normal domestic supply (in Romania). The input VAT deduction there was only problematic due to the lack of an invoice. In Bulgaria, on the other hand, the input VAT deduction should already fail because the supply of the tools is not a "normal" supply, but also a tax-free intra-Community supply.

The Advocate General first addresses the background to the question referred, as the referring court assumes that the sale of the special tool from Brose DE to Brose SK is an artificial arrangement, without being able to identify a tax advantage.

It is unclear whether it is assumed in Bulgaria that the special tools were supplied tax-free by Brose DE to Brose SK or whether it is assumed that the special tools were supplied tax-free by IME Bulgaria to Brose SK. This is probably related to the fact that the referring court assumes an artificial splitting of the transactions (supplies of components and tools).

The Advocate General - in agreement with the opinion of the Commission and Brose SK - is not convinced by this. In any event, a supply from Brose DE to Brose SK does not fail because the special tools are continuously used in Bulgaria by IME Bulgaria to manufacture the components. Rather, the transfer of ownership of an item - as occurred here between Brose DE and Brose SK - is precisely the classic case of a supply under Article 14(1) of the VAT Directive.

It is true that a supply includes any transfer of a tangible item by one party which authorizes the other party to dispose of this item de facto as if it were its owner. The absence of a transfer of ownership under civil law therefore does not preclude a supply. Even if the recipient of a delivery does not dispose of the delivered item "as the owner", he can at least deal with it "as an owner". This is at least made clear in some language versions of the VAT Directive.

Rather, the decisive factor is that the power of disposal has been transferred. The power of disposal over an object is assigned to the party that (positively) can dispose of the substance of the object and (negatively) also bears the risk of accidental loss of this object. This was evidently Brose DE in this case, as it was the only one able to realize the economic substance of the special tools through a sale and subsequent transfer of ownership. The fact that IME Bulgaria should bear the risk of accidental loss of the tools, e.g. due to flooding of its premises, is not apparent from the file. Consequently, the transfer of ownership of the special tool from Brose DE to Brose SK in return for payment also constituted a delivery between them.

Nor was there any indication that another party (in particular not IME Bulgaria) had obtained power of disposal over the tools. The mere transfer of possession and permission to use these items for the production of components is not sufficient for this. This is clearly illustrated by the example of a tenant. The tenant does not acquire any power of disposal over the rented property either. Rather, it remains with the owner, who "disposes" of the property precisely by renting it out.

The transfer of ownership from Brose DE to Brose SK also appears to have taken place effectively. There is no evidence of an artificial arrangement. Insofar as the referring court and the Bulgarian tax authorities refer to the decision of the Court of Justice in the Part Service case (judgment of 21 February 2008, C-425/06) for this assumption, this is based on an obvious misunderstanding. That case concerned a division of a single (taxable) transaction into a taxable rental and a tax-free insurance service provided by two group companies to one recipient. The present case is not even remotely comparable.

The recipient of the two supplies in this case was Brose SK. On the one hand, there were no corporate relationships between the two suppliers (Brose DE and IME Bulgaria). Secondly, no part of the supply was to be artificially exempt from tax, but on the contrary, Brose DE had supplied the special tools subject to tax (and apparently also paid the Bulgarian VAT correctly). None of the indications given to the national court by the Court of Justice in the aforementioned decision to assess whether there are two transactions by two group companies or only one transaction by one group company are relevant here. Why the sale of special tools from one group company to another group company should be "economically illogical" simply because the special tools remain with the supplier of the parts in Bulgaria - as the referring court expressly states in the reference - is not comprehensible in this respect.

If the meaning and purpose of "tooling" is understood correctly, then the primary aim is to find another local subcontractor under comparable conditions in the event of the insolvency of the originally commissioned subcontractor, who can quickly resume production of the components with the help of the special tool in order to avoid interruptions in the (sometimes global) supply chains. The ownership of the client (or another group company of the client) prevents creditors of the insolvent subcontractor from enforcing the special tool. These are likely to be valid economic reasons.

The question as to which group company's balance sheet contains the special tools appears to be more of an internal group issue, the economic logic of which cannot be assessed on the basis of the facts available. It was also not relevant for the assessment under VAT law, provided that the power of disposal had actually been transferred from Brose DE to Brose SK. However, according to the referring court, there are no discernible doubts about this.

Therefore, it must first be clarified whether the sale of the special tool constitutes a tax-free intra-Community supply. The requirements for the existence of a tax-free intra-Community supply are set out in Art. 138 of the VAT Directive.

However, this exemption only applies if the goods supplied (here the special tool) have been "dispatched or transported" by the seller (here Brose DE), the purchaser (here Brose SK) or a third party on their behalf (usually a forwarding agent). According to settled case-law of the Court of Justice, the exemption of the supply of goods within the meaning of that article therefore only becomes applicable once the goods have physically left the Member State of supply as a result of that dispatch or transport. According to the request for a preliminary ruling, however, the special tool is still located in Bulgaria. In this respect, it seems strange to speak of an intra-Community supply.

This impression is reinforced if one considers the meaning and purpose of the provision of Art. 138 of the VAT Directive. This is because the tax exemption regulated therein was deliberately not included in Chapters 2 and 3 of Title IX of the VAT Directive. This is not a matter of favoring the recipient, as is the case, for example, with the tax exemptions of Art. 132 of the VAT Directive. This tax exemption is also not an advantage for the supplier.

Rather, this tax exemption serves solely to implement the destination principle for supplies between taxable persons within the Union, in that the supply is exempt in the country of origin (where the transport begins) (tax-free transaction of the supplier) but taxed in the country of destination (taxable transaction of the purchaser). This is because Article 2(1)(b) of the VAT Directive makes it clear that intra-Community acquisitions are also taxable transactions. Intra-Community acquisitions are governed by Art. 20 of the VAT Directive and tax the purchaser of goods as part of a supply in the country of destination.

Ultimately, this is just a different taxation technique which, as a result, shifts the place of supply from the country of origin to the country of destination and is accompanied by a transfer of the tax liability to the purchaser in the country of destination.

If the intra-Community acquisition pursuant to Art. 20 of the VAT Directive also requires that the goods are "dispatched or transported" to the acquirer (in this case Brose SK), then no intra-Community supply can be assumed in the present case. Consequently, no tax exemption under Art. 138 of the VAT Directive applies.

A different result would only be conceivable if the supply of the components by IME Bulgaria and the supply of the special tool as a whole by Brose DE could be regarded as a single intra-Community supply made to Brose SK. However, this approach is also rather remote.

Firstly, the Court of Justice has consistently held that, for VAT purposes, each transaction is generally to be regarded as a separate, independent transaction. This follows from the second subparagraph of Article 1(2) and Article 2 of the VAT Directive and applies even if there is a certain connection between several transactions because they serve a single economic objective.

The uniform economic objective was already missing here. Such an objective was not recognizable in the case of deliveries by two different suppliers (IME Bulgaria and Brose DE) in relation to two different items (the components manufactured in Bulgaria and the special tool remaining there), which were also made independently of each other.

Secondly, the above-mentioned principle of the independence of each transaction is only broken in cases of a dependent ancillary service or a uniformly complex service. Even if the Court of Justice has somewhat confused these two groups of cases in a recent decision (judgment of 4 May 2023, C-516/21), they are two different constellations, neither of which are present here.

A service is to be regarded as a dependent ancillary service to a main service if it does not represent an end in itself for the customer, but rather the means to utilize the main service of the service provider under optimal conditions.

Since Brose DE and IME Bulgaria are independent taxable persons, it is hardly possible to determine a main supply here. This is because, contrary to what Bulgaria claims in its statement, the supplies mentioned each have their own, original character and none of the supplies is subordinate to the other in terms of its purpose. None of these transactions is a dependent ancillary service in relation to the other.

There is also no uniformly complex service. In this case, several supply components form a sui generis supply. This is the case if the taxable person's supply consists of two or more elements or actions that are so closely linked that they objectively form a single inseparable economic supply, the separate consideration of which would be unrealistic. The Court of Justice determines whether this is the case by determining the characteristic features and thus the nature of a transaction from the "perspective of the average consumer".

An inseparability of the supply elements is also not recognizable here. From the perspective of an average consumer, the separate treatment of the supply of the manufactured components by one taxable person and the supply of the special tool by another taxable person is not unrealistic. On the contrary, separate treatment is obvious because both supplies are made by different taxable persons.

If two services have a certain proximity to each other in terms of content but are provided by two different taxable persons, this can only be treated as a single transaction in exceptional cases, namely if the splitting of a transaction into two independent parts would be artificial.

Consequently, both the assumption of a dependent ancillary service and the assumption of a uniform complex service are ruled out in principle if different service providers are involved. Something else could only be assumed in the case of an artificial splitting of a transaction by the actual supplier between two taxable persons controlled by him. Accordingly, the Court of Justice always formulates that the taxable person (i.e. one) makes several supplies which are to be treated either separately or uniformly.

The protection of fundamental rights also supports this result. A taxable person who is compulsorily involved in the collection of tax can hardly have his price calculation destroyed retrospectively and unilaterally by a third party. This would be the case, for example, for a small entrepreneur who is granted a tax exemption for his transactions in Art. 287 of the VAT Directive for reasons of procedural simplification. The latter would lose this exemption, without having any influence on it, simply because its supplies had a substantive connection to supplies by

another taxable person which the recipient had also received.

Insofar as the Court of Justice in the Horizon College case (judgment of 14 June 2007, C-434/05, para. 46) extended an exemption (now contained in Article 132(1)(i) of the VAT Directive) to a third party (a subcontractor), this only concerned the "closely connected services and supplies" associated with an exempt transaction. However, this is a different group of cases than the main and ancillary supply or the uniformly complex supply. Article 138 of the VAT Directive does not refer to closely related services and supplies.

Since the supplier of the special tool (Brose DE) and the supplier of the intra-Community supplies of the manufactured parts (IME Bulgaria) are two independent taxable persons, the VAT assessment of the respective supply cannot be influenced by the other supply. A dependent ancillary supply was ruled out, as was a uniformly complex supply. This means that each transaction must be considered in isolation. The supply of the special tool therefore remained a "normal" supply, the place of which was in Bulgaria in accordance with Art. 31 of the VAT Directive and for which no tax exemption was apparent.

At the end of her Opinion, the Advocate General then makes further auxiliary considerations, which ultimately also support Brose SK's opinion.

The Advocate General therefore comes to the following conclusion and proposes that the CJEU respond as follows:

If the recipient of tax-free intra-Community supplies of components manufactured by a subcontractor using a special tool located in Bulgaria acquires this special tool from the owner (a third party established abroad) and continues to use it to manufacture the components in Bulgaria, this constitutes a taxable supply in Bulgaria. The supply of the right to dispose of the special tool itself does not constitute a tax-free intra-Community supply, nor is it to be regarded as a dependent ancillary supply to the tax-free intra-Community supply of the subcontractor's manufactured components or as part of a tax-free uniformly complex intra-Community supply. Consequently, Article 4 of Directive 2008/9 does not exclude the right to reimbursement of the VAT paid.

Please note:
Tooling is a common practice, especially among suppliers in the automotive industry. A subcontractor is commissioned to manufacture certain parts. These can only be produced with special tools (sometimes only with certain production systems). The tools are also ordered from the subcontractor but remain the property of the client and are only used on site by the subcontractor to manufacture the parts.

If the parts manufactured with these tools are supplied to the customer in another Member State, this constitutes a tax-free intra-Community supply. However, if the tools are later sold to a third party abroad (i.e. ownership is transferred to a third party) without changing their location, the question arises as to whether the sale of these tools is taxable.

The procedure once again raises questions regarding the determination of main and ancillary services or a single complex service. This time in connection with a tax-free intra-Community supply. These have not yet been answered by the Court of Justice, meaning that the CJEU´s decision is likely to have far-reaching consequences for practice (according to the Advocate General, para. 4 of the Opinion).

NEWS FROM THE BFH

Reemtsma direct claim

BFH, decision of 5 December 2024, V R 11/23

The ruling concerned the requirements of the so-called Reemtsma direct claim under EU law.

Facts of the case

This case concerned the plaintiff, which acted as the controlling company of M-GmbH in 2006 and claimed an input tax deduction on the basis of bonus payments to a customer. These bonus payments were regarded as remuneration for alleged services provided by the customer. The tax office refused the input VAT deduction as it considered the bonus payments to be a reduction in consideration for supplies by M-GmbH. The plaintiff applied for a different tax assessment on equitable grounds, which was rejected by the tax court. The plaintiff lodged an appeal in order to assert a direct claim under EU law for reimbursement of the incorrectly invoiced VAT.

From the reasons for the decision

Direct claim and EU law: The BFH maintains that a direct claim only exists in accordance with the CJEU ruling Reemtsma Cigarettenfabriken if a tax was incorrectly shown in an invoice for a service

provided or to be provided. The CJEU sees the direct claim as an exception if it is impossible or excessively difficult for the supplier to reclaim the tax.

Input VAT deduction and principle of neutrality: The CJEU guarantees the principle of neutrality through the right to deduct input VAT, which only exists for tax that is actually due. A tax that is only due on the basis of a tax statement in an invoice is not deductible. The direct claim mitigates the consequences of the denial of input tax deduction if a tax has been incorrectly reported.

Lack of tax disclosure: In the case in dispute, there was no proper tax disclosure in the "charges" as the amounts were marked with a minus sign. A later correction of the invoices by the customer or insolvency administrator does not change this, as an original tax statement is a prerequisite for the input tax deduction.

Provision of services: The bonus payments are to be regarded as genuine bonuses and discounts that do not constitute remuneration for a separately remunerated service provided by the customer. The achievement of certain purchase quantities is not another service.

Illegality of the tax assessment: The tax assessment was not obviously and clearly incorrect, so that a change for reasons of equity was not justified.

No request for a preliminary ruling: The legal issues were sufficiently clarified by CJEU case law, so that no request for a preliminary ruling was necessary.

Please note:
As a rule, the service recipient must first assert their claim for reimbursement of incorrectly invoiced and unjustifiably paid VAT against the service provider under civil law. If the supplier objects to the recipient's request that the claim for invoice correction is time-barred, this does not preclude the direct claim against the tax office (contrary to the BMF's opinion in its letter of 18 April 2022) (see CJEU rulings of 7 September 2023, C-453/22, Schütte; of 13 March 2025, C-640/23, Greentech).

A decision on a direct VAT claim must be made as part of an equity procedure in accordance with Sections 163, 227 AO (see BFH rulings from 30 June 2015, VII R 30/14 and VII R 42/14). The tax office responsible for the VAT assessment of the service recipient is responsible for deciding on this equitable measure.

For the limits of the direct claim, see CJEU, judgment of 5 September 2024 Case C-83/23 - H (VAT Newsletter August/September 2024); according to this, the recipient cannot claim a refund if the VAT has already been paid to the supplier by the tax office.

VAT for administrative services for "dependent foundations"

BFH, judgment of 5 December 2024, V R 13/22

The BFH ruling concerns the taxability of administrative services for "dependent foundations".

Facts of the case

The BFH ruling dealt with the question of whether the management of "dependent foundations" by an association is subject to VAT. The plaintiff, a registered association, managed assets as a trustee, which were designated as "dependent foundations". This administration included various services such as bookkeeping and asset investment, for which the association received annual contributions. The tax office (FA) amended the association's VAT returns and considered the administrative services to be taxable services. However, the Münster tax court ruled that the "dependent foundations" were not recipients of services under VAT law, as they could not enter into any legal relationships.

From the reasons for the decision

The BFH overturned the judgment of the Münster Fiscal Court and referred the case back for a new hearing. The BFH found that it was sufficient for a taxable administrative service to relate to a special fund, irrespective of whether the recipient of the service pursued its own or third-party financial interests.

Legal relationship and exchange of services: The BFH emphasized that a legal relationship must exist between the service provider and the service recipient, within the framework of which mutual services are exchanged. The association had concluded contracts with the founders that regulated the provision of administrative services in return for payment. These agreements constituted independent agency agreements for consideration.

Consumable benefit: The BFH argued that the founder received a consumable benefit as the association managed the assets in the interests of the founder. The

management of the assets led to an economic benefit for the founder, who could be regarded as the recipient of the management service.

The tax court had denied the taxable provision of services as it did not consider the "foundation assets" to be the recipient of the services. The BFH clarified that the association's administrative services were taxable as they related to special assets.

The BFH pointed out that the tax court would have to examine in a second instance whether the other "foundation assets" managed by the association were also taxable services and whether personnel and material cost reimbursements were to be regarded as remuneration for services rendered.

Finally, the BFH emphasized that the tax treatment of administrative services is independent of whether the founder is still alive or has legal successors.

Please note:
In its ruling, the BFH refers to an older decision from 1981 (ruling of 10 December 1981 - V R 36/76, BStBl. II 1982, 178). According to this ruling, an administrative service provided to
According to this ruling, a management service rendered to unitholders for consideration - but not a management of own assets that is irrelevant under tax law - exists if an investment company influences the value of an investment fund and thus at the same time the unit value of this fund with its management activities, whereby remuneration for this may also result from a management fee that the investment company may take from the investment fund in accordance with the agreements made with the investors and thus at the expense of the unitholders who are to be regarded as recipients of the service. According to the present ruling, this also applies if the special fund does not serve to promote the financial interests of an investor, but a founder transfers assets to a special fund so that they can be used for charitable purposes, for example, and are to be managed profitably on the way to this use (see Wäger, DStR 2025, 1039).

Admissibility of a complaint against an incorrect tax statement

BFH, decision of 30 April 2025, XI B 72/24

The proceedings concerned a legal dispute in which an entrepreneur had wrongly reported VAT and brought an action against the resulting tax assessment.

Facts of the case

The plaintiff had shown VAT in his invoices, which, in the opinion of the tax office, he owed in accordance with Section 14c (2) sentence 1 UStG. The plaintiff first appealed against the subsequent assessment to the tax office and then to the tax court.

The tax court ruled that the plaintiff could not claim to be adversely affected by the VAT assessments within the meaning of Section 40 (2) of the German Fiscal Court Code (FGO). In the grounds of the contested judgment, the court also stated with regard to VAT that the plaintiff, who as an entrepreneur within the meaning of sec. 2 para. 1 sentence 1 UStG (in the version applicable in the years in dispute) had carried out tax-exempt transactions by arranging financing, owed the VAT shown on his invoices in accordance with sec. 14c para. 2 sentence 1 UStG even if he was not an entrepreneur.

Reasons for the decision

The BFH ruled that the plaintiff already had standing to bring an action due to the fact that he was the addressee of onerous administrative acts insofar as he had objected to the VAT assessments for the years 2010, 2012 and 2013. For the assumption of standing within the meaning of Section 40 (2) FGO, it is sufficient for the plaintiff to assert, mutatis mutandis, that the VAT for the years 2010, 2012 and 2013 was unlawfully set too high, which infringes his rights. In any case, the plaintiff does not lose the right to bring an action because - as the tax court incorrectly assumed - the plaintiff himself reported VAT in his invoices and therefore owes the tax in accordance with Section 14c (2) sentence 1 UStG. The possibility of having one's rights infringed also exists in the case of a VAT assessment that was issued on the basis of sec. 14c para. 2 sentence 1 UStG. The question of whether VAT is owed in accordance with sec. 14c para. 2 UStG is a question of the merits.

The statements of the tax court on the merits would be deemed not to have been written in this respect, as they would also be procedurally flawed in the case of a trial judgment. It is legally erroneous for the tax court to enter into a substantive review and make statements on the merits, although it has denied the admissibility of an action in this respect. In principle, a court's substantive power to review the merits of a case is only opened up once the

admissibility of the action has been established.

Please note:
The BFH rightly found that an onerous administrative act (tax assessment notice) had been issued to the plaintiff. This was sufficient for a violation of the law and thus for the right to bring an action if the other formal requirements had been met. Whether the assessed tax liability was incurred in accordance with § 14c UStG was irrelevant for an alleged infringement. It was therefore not important that the tax liability had arisen through the company's own invoicing, but only whether the resulting tax assessment burdened the plaintiff (in his opinion unjustly).

On the concept of mediation

BFH, decision of 24 April 2025, V B 4/24

Facts of the case

In the case in dispute, the plaintiff "brokered" customers for the purchase of investment gold and received commissions. The tax office rejected the tax exemption of the services, as the services were not directly connected to the brokerage.

Reasons for the decision

In its reasons for the decision, the BFH points out that, according to the case law of the CJEU, which the tax court used to interpret the term "intermediary" in sec. 25c para. 1 sentence 2 of the German VAT Act, exempt transactions are defined by the type of services provided.

In order to qualify as a tax-exempt intermediary service, the service must be a broadly independent whole that fulfills the specific and essential functions of a tax-exempt intermediary service. A service only has an independent character and fulfills the specific and essential aspects of an intermediary activity if it includes the search for customers and the establishment of contact between the parties who are to conclude the brokered contract (see CJEU judgments Aspiro of 17 March 2016 - C-40/15, para. 37 and of 3 March 2005 - C-472/03, para. 36). Taking into account the freedom of the organizational model, this also applies if the brokerage of a transaction is carried out by different persons in a division of labour and is therefore split into different services. The concept of brokerage in the area of financial services does not include any services that do not have a specific and essential connection to the individual transaction that is to be brokered (following the ruling of the BFH of 30 October 2008 - V R 44/07, BStBl II 2009, 554, para. 16)

Please note:
The brokerage activity is provided to a contracting party and is remunerated by this party as an independent intermediary activity. The purpose of the activity is to do what is necessary for two parties to conclude a contract without the intermediary having a vested interest in the content of the contract. It may consist of presenting one party with opportunities to conclude a contract, contacting the other party or negotiating the details of the mutual services in the name and on behalf of the customer. It may involve brokerage and consulting activities to search for prospective buyers. Since a mere verification activity is also sufficient, the fact that the terms of the loan agreement are determined in advance by one of the contracting parties does not prevent the tax exemption of loan brokerage.

On the other hand, there is no tax exemption for services that have no specific and significant connection to individual brokerage transactions, but at most serve to support another entrepreneur who provides brokerage services, as the BFH decided in the current decision with reference to its earlier decision from 2008.

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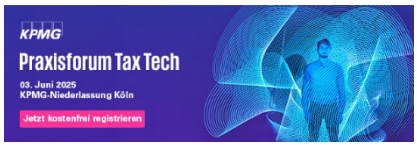

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Imprint
Publisher

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