VAT News: Hot topics and issues in indirect taxation

March 2026

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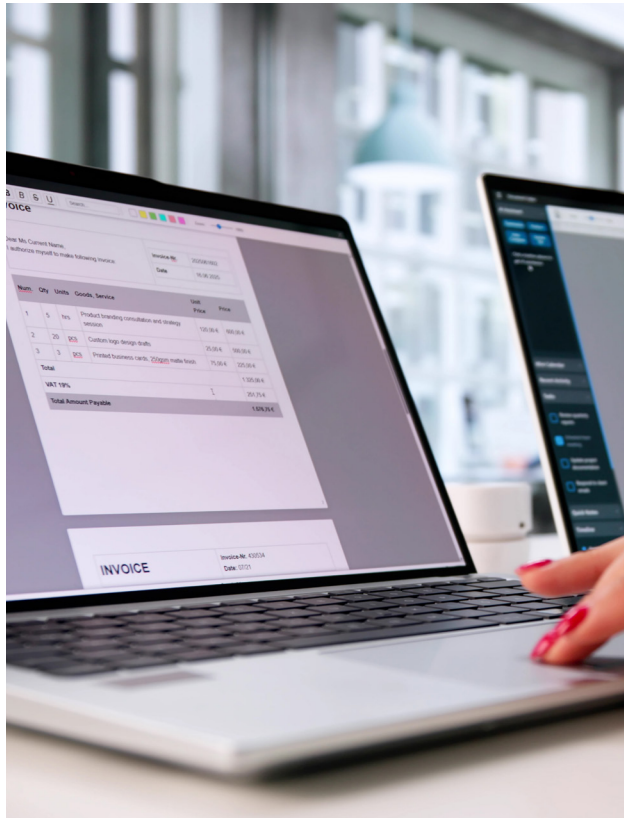
01 I Input Tax Deduction in Case of Late Receipt of Invoices for Intra-Community Acquisitions

CJEU, Judgment of March 12, 2026 – Case C-521/24 – Aptiv Services Hungary



Facts of the case

Aptiv Services Hungary Kft. (hereinafter: A) made intra-Community acquisitions of goods in the years 2016–2018. However, the corresponding invoices were not received until years later, so the company did not claim the input tax deduction until the July through September 2021 VAT returns.

The Hungarian tax authority denied the right to deduct input VAT. According to its position, a taxable person who receives the invoices required to exercise the right to deduct VAT relating to intra-Community acquisitions of goods at a later date may not claim the input VAT deduction in that subsequent tax period.

The referring court has doubts as to whether the input tax deduction on intra-Community acquisitions can be denied due to missed deadlines resulting from late invoicing and asked the CJEU the following question in its request for a preliminary ruling: Are Art. 168(c), Art. 178(c) and (d), and Arts. 179 to 182 of the VAT Directive, as well as the principles of tax neutrality, proportionality, and effectiveness be interpreted as being compatible with the legislation and practice of a Member State under which the deduction of input tax on intra-Community acquisitions of goods is refused and definitively excluded (impossibility of submitting a corrective return and rejection of the application for a special tax refund procedure), that the taxpayer, for administrative reasons, did not exercise his right to deduct input tax in the same tax period for which the tax due was assessed, provided that this occurred before the expiration of the statute of limitations and under circumstances in which the tax administration of the Member State raised no objections to the exercise of that right during previous audits?

Court's reasoning

In the present case, according to the order for reference, A did not receive from its suppliers until 2021 the invoices necessary to exercise its right to deduct the VAT on the intra-Community acquisitions of goods made between 2016 and 2018. She was therefore able to assert her right to input tax deduction for the first time in the VAT returns she filed for the period in which she actually received and recorded those invoices in her accounting records.

A acted in good faith. Furthermore, the right to deduct input tax had not yet expired under national law at the time A exercised it.

In the context of intra-Community acquisitions, where the reverse-charge mechanism applies, no VAT payment is made between the acquirer and the supplier of a good; the acquirer is required to pay VAT on the intra-Community transactions carried out but may, in principle, deduct it, so that no amount is owed to the tax authorities.

According to settled case law, the right of taxable persons to deduct from the VAT they owe the VAT that is due or has been paid as input tax on the goods they have acquired and the services they have received is a fundamental principle of the common VAT system established by EU law. The Court of Justice has repeatedly emphasized that this right is an integral part of the VAT mechanism and, in principle, cannot be restricted (Judgment of the Court of Justice of 18 March 2021, C-895/19).

The rules on input tax deduction are intended to fully relieve the business operator of the value-added tax owed or paid in connection with all of its economic activities. In this way, the common system of value-added tax ensures the neutrality of the tax burden on all economic activities, regardless of their purpose or outcome, provided that those activities are themselves subject to value-added tax.

Under Article 167 of the VAT Directive, the right to deduct input tax arises when the entitlement to the deductible tax arises. Pursuant to Article 69 of that directive, the tax becomes chargeable in the case of intra-Community acquisitions of goods upon the issuance of the invoice or upon the expiry of the time limit set out in Article 222(1) of that directive, if no invoice has been issued by that time (Judgment of March 18, 2021, C-895/19).

Furthermore, the right to deduct input tax is subject to the substantive and procedural requirements of the VAT Directive (Judgment of March 18, 2021, C-895/19, para. 35 and the case law cited therein).

The substantive conditions for the entitlement to deduct input tax, which is due under Article 2(1)(b)(i) of that Directive for intra-Community acquisitions of goods, are set out in Article 168(c) of the VAT Directive. According to those conditions, it is necessary that such acquisitions be made by a taxable person, that that person also be liable for the VAT due on those acquisitions, and that the goods in question be used for the purposes of his taxable transactions.

The formal conditions for this right, in turn, govern the procedures and control of its exercise, as well as the proper functioning of the common VAT system, including the obligations regarding record-keeping, invoicing, and tax returns.

With regard to the VAT due on intra-Community acquisitions, it follows from Article 178(c) of the VAT Directive that the exercise of the right to deduct input tax is subject to the condition that the taxable person has provided, in the VAT return pursuant to Article 250 of that directive, and that he holds an invoice issued in accordance with Title XI, Chapter 3, Sections 3 to 5 of the VAT Directive. However, possession of an invoice containing the information required under Article 226 of the VAT Directive constitutes a formal, not a substantive, condition for the right to deduct input tax (CJEU judgment of September 15, 2016, Senatex, C-518/14, para. 38).

Under Article 179(1) of the VAT Directive, the input tax deduction is made by the taxable person on a global basis by deducting from the tax amount owed for a tax period the amount of VAT "for which the right of deduction has arisen during the same tax period and is exercised in accordance with Article 178" (CJEU judgment of March 18, 2021, C-895/19, para. 39).

Under Article 167 of the VAT Directive, the right to deduct input tax arises simultaneously with the tax liability. However, under Article 178 of that Directive, it may only be exercised once the taxpayer is in possession of an invoice (CJEU judgment of March 21, 2018, Volkswagen, C-533/16, para. 43).

The right to deduct input tax must therefore, in principle, be exercised for the tax return period in which the two cumulative conditions are met, i.e., the right to deduct input tax has arisen and the taxpayer is in possession of the relevant invoices (see CJEU judgment of April 29, 2004, Terra Baubedarf-Handel, C-152/02).

Under Articles 180 and 182 of the VAT Directive, the exercise of the right to deduct input tax may also be permitted if it did not take place during the period in which the right to deduct input tax arose, provided that certain conditions and details laid down in national regulations are complied with (see CJEU judgment of March 18, 2021, C-895/19, para. 42).

In the present case, subject to the checks to be carried out by the referring court, it must be noted that, according to the order for reference, the substantive and procedural requirements for the right to deduct input tax were not cumulatively met until 2021. It was only in the course of that year that A came into possession of the invoices necessary to exercise the right to deduct the VAT on intra-Community acquisitions of goods made between 2016 and 2018. A could therefore exercise that right only in the VAT returns relating to those latter periods.

Under the national legislation relevant to the main proceedings, a taxpayer who receives the invoices necessary to exercise the right to deduct VAT on intra-Community acquisitions of goods late may not, however, claim the deduction in a VAT return filed for the period in which the invoices were received.

A national rule that does not allow a taxpayer acting in good faith and within the limitation period to exercise his right to deduct input tax in the tax period in which he actually receives the necessary invoices thereby makes the exercise of the right to deduct input tax practically impossible. In any event, it makes it excessively difficult. This violates the principles of effectiveness, proportionality, and neutrality, because A also acted in good faith.

As a result, the CJEU thus considers the Hungarian regulation to be contrary to EU law, and A should therefore still be able to claim the input tax deduction in 2021, since she did not receive the invoices until then.

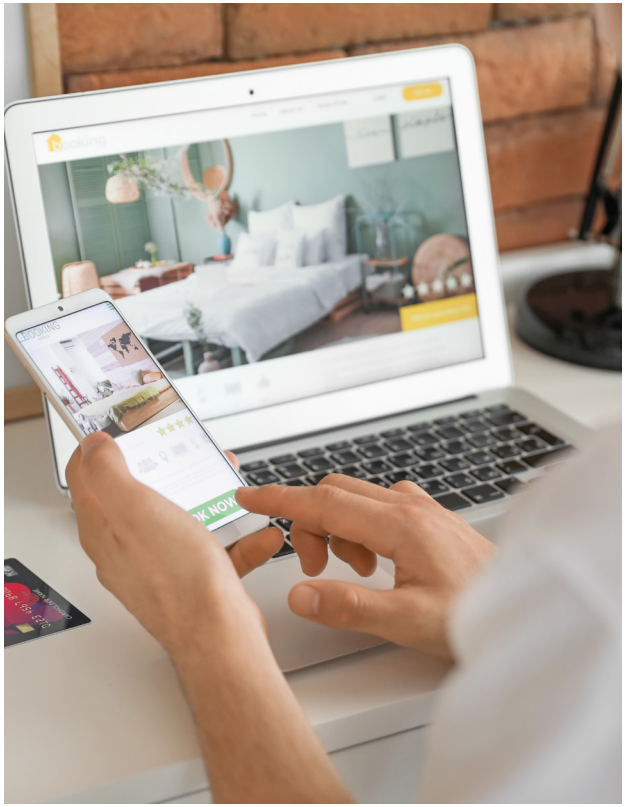
Please note:

The CJEU's judgment once again provides a textbook definition of the relevant requirements and the scope of application of the relevant provisions on input tax deduction in the VAT Directive. The most important sentence in this judgment is: National rules must not make input tax deduction more difficult or impossible. This is important, but also necessary to ensure that minor, formal errors in Germany do not result in the denial of the input tax deduction.

However, this dispute could hardly have unfolded in the same way in Germany. This is because, under German law, if invoices are indeed received by the customer late, the right to claim input tax credits is tied to the date the invoice is received. As things stand, the timing of the input tax deduction is determined by the transaction and the receipt of the invoice (see, however, the General Court judgment of February 11, 2026, T-689/24, according to which an input tax deduction may also be claimed for invoices received up to the filing of the next tax return; see the explanations on this in the February 2026 newsletter – the Advocate General at the CJEU has since suggested a review of the General Court's judgment). The issue of invoices and input tax deduction will therefore continue to be a topic of discussion.

02 I Selective application of the reduced VAT rate to ancillary services for short-term accommodation

CJEU, Judgment of March 5, 2026 – Cases C-409/24, C-410/24, C-411/24 – J-GmbH et al.



The question of whether the preferential transaction (Section 12(2)(11), first sentence, of the German Value Added Tax Act (UStG)) for overnight stays, e.g., in a hotel, as a single service can also have implications for other services provided there, such as breakfast, has been a recurring topic in VAT literature for several years. With its decision of March 5, 2026, the CJEU has hopefully resolved all remaining doubts.

Facts of the case

The Federal Fiscal Court referred several questions to the CJEU regarding the VAT treatment of short-term accommodation services in Germany. Under German law, short-term overnight stays are subject to a reduced VAT rate, while ancillary services such as parking, breakfast, or other additional services are subject to the standard VAT rate, provided they do not directly serve the accommodation according to the national allocation method (see Section 12(2)(11), second sentence, of the German VAT Act (UStG)).

The affected companies argued that this allocation was contrary to EU law, as these were dependent ancillary services that, under the principle of a single supply, should be subject to the same tax rate as the main service of "accommodation."

The CJEU now had to clarify whether Article 98 of the VAT Directive and Annex III, No. 12, permit a Member State to apply the reduced tax rate only to the portion directly serving the accommodation and to tax other services covered by the same payment at the standard rate.

Court's reasoning

The CJEU first clarifies that Article 98(1) and (2) of the VAT Directive expressly grant Member States the option to apply reduced tax rates to certain supplies of goods and services. The list in Annex III, No. 12 ("Accommodation in hotels and similar establishments") concerns a category whose application Member States are permitted to specify.

This power also includes the right to "isolate concrete and specific aspects" of this category and treat them differently, provided that this respects the structure of the Directive.

It is compatible with EU law for a Member State to provide for a requirement to separate services that do not directly serve the purpose of accommodation from the reduced tax rate.

An ancillary service (such as parking) may be treated separately for VAT purposes if it is not necessary for the core benefit of accommodation

and remains economically independent. The mere fact that several services are covered by a single flat-rate payment does not necessarily result in a single service.

Tax neutrality requires that comparable services be taxed equally.

The German regulation does not violate this principle, as the reduced tax rate applies exclusively to services that functionally serve the accommodation, while other, qualitatively different services (such as parking, wellness areas, and additional services) are not directly related to the actual short-term accommodation.

As long as the criteria are clear, appropriate, and predictable for businesses, the distinction remains in compliance with EU law.

Conclusion: The CJEU has no concerns under EU law regarding the German regulation. Article 98 of the VAT Directive, in conjunction with Annex III, No. 12, does not preclude a national regulation that subjects only the actual accommodation services to the reduced tax rate and classifies other ancillary services not directly related to accommodation under the standard rate, even if these are calculated together as a lump sum.

The CJEU thus confirmed the admissibility of the German allocation model under EU law.

Please note:

Member States may limit the reduced VAT rate for accommodation services to the core service and tax other ancillary services at the standard rate, provided this is done in an appropriate and neutral manner.

In contrast, in its judgment of August 17, 2023 (C-516/21), the CJEU deemed the German allocation requirement in Section 4(12), sentence 2, of the German Value Added Tax Act (UStG) to be contrary to EU law. The Federal Fiscal Court (BFH) concurred with this in its judgment of May 17, 2023 (V R 7/23). Section 4(12), sentence 2, of the German Value-Added Tax Act (UStG) is not applicable to the leasing of permanently installed fixtures and machinery if this constitutes an ancillary service to the leasing of a building as the principal service, which is tax-exempt under Section 4(12), sentence 1, letter a, of the UStG pursuant to a contract concluded between the same parties, so that a single service is provided. The BFH case concerned a poultry house for turkey breeding with specially tailored equipment. The BFH concurred with the tax court, which held that the equipment elements were exempt from VAT, just like the main service. The Federal Ministry of Finance (BMF) has sent a draft BMF letter dated November 18, 2025, to the associations for comment on this issue. A final BMF letter on this matter is expected in the foreseeable future.

03 | No Classification as a "Voucher" in Customer Loyalty Programs

CJEU, Judgment of March 5, 2026 – Case C-436/24 – Lyko Operations

In practice, there are numerous and varied customer loyalty programs in which companies reward customers for their purchases or other activities to encourage repeat purchases and build long-term relationships. These programs may involve point systems, tiered memberships, exclusive discounts, or free products.

A case involving such a customer loyalty program was referred to the CJEU from Sweden for a preliminary ruling.

Facts of the case

Lyko Operations sells hair care and beauty products in retail stores and online. The company intends to establish a customer loyalty program and applied to the Skatterättsnämnd (Tax Law Committee, Sweden) for a preliminary ruling on VAT to clarify how the program would be treated for VAT purposes.

The customers (private individuals) of Lyko Operations (LO) should be able to participate in the program at no additional cost. The program provides that customers receive points for every regular purchase of products offered on a permanent basis, which they can then redeem for items in a so-called "points shop." This redemption can only take place in connection with a new purchase of such products. The points shop would be continuously updated and would consist of items from the permanently available product range. The items would mainly be of lower value and subject to various VAT rates (for example, beauty products taxed at 25% and dietary supplements taxed at 12%).

Each product would be assigned a price in points, and the prices would be set so that customers would receive items in the Points Shop corresponding to approximately 2% to 10% of their original purchases. Each point a customer redeems would be linked to the total purchases made during the month in which the point was awarded. The points would not be redeemable for cash or purchasable for cash. They would be personal and non-transferable. Items in the points shop would also not be available in exchange for a combination of points and cash. Accumulated points would expire if not used within two years.

The Swedish Supreme Administrative Court (Högsta förvaltningsdomstolen) referred the question to the CJEU as to whether such loyalty points should be classified as "vouchers" within the meaning of Article 30a of the VAT Directive.

Court's reasoning

Article 30a(1) of the VAT Directive defines a voucher as an instrument where, first, "there is an obligation to accept it as consideration or part thereof for a supply of goods or services" and, second, "the goods to be supplied or the services to be provided, or the identity of the potential suppliers or service providers, are specified either on the instrument itself or in related documents, including the conditions for the use of that instrument."

For a specific instrument to satisfy the first condition, Article 30a(1) of the VAT Directive requires that there be an "obligation" on the part of the economic operator to whom it is presented to accept it as full or partial consideration for a supply of goods or services.

This requirement means – as set forth in the fourth recital of Directive 2016/1065 – that instruments are excluded from classification as "vouchers" within the meaning of Article 30a(1) of the VAT Directive, which do not confer on the holder the right to receive such goods or services, but merely entitle him, for example, to a price reduction on a subsequent purchase of goods or services.

One of the essential characteristics of a "voucher" within the meaning of Article 30a(1) of the VAT Directive is the nature of the right embodied by the voucher and the obligation to accept it in exchange for the supply of goods or the provision of services.

In the present case, the points credited to LO's customers in the LO points shop based on the amount of their purchases are to be used in connection with a subsequent purchase of goods from LO and enable customers to receive goods of low value offered by that company.

In those circumstances, such points do not impose an obligation on the supplier to accept them in exchange for a supply of goods. The points merely entitle their holder, if he decides to make a further purchase from that supplier, to receive additional goods of low value as a bonus.

Since, according to the information provided by the referring court, the instrument at issue in the main proceedings does not appear to meet one of the two cumulative conditions for classification as a "voucher" within the meaning of Article 30a(1) of the VAT Directive, it cannot therefore constitute either a "single-purpose voucher" or a "multi-purpose voucher" within the meaning of Article 30a(2) and (3) of the VAT Directive.

The CJEU concludes that Lyko loyalty points are not vouchers within the meaning of the VAT Directive. Rather, they should be classified as part of a discount/bonus mechanism; not, however, as an independent instrument under tax law. National law may therefore treat them in accordance with the general principles of VAT law.

Please note:

The loyalty points collected at LO should not confer on the customer the right to use or accept them as consideration for a supply. The referring court expressly pointed out that the customer loyalty program is structured such that the customer is only entitled, in connection with a future purchase, to use the points to receive additional items from Lyko's product range as part of that future purchase. Thus, the points do not give rise to an obligation on the part of the supplier to deliver an item, but can only be used in connection with a (further) obligation on the part of the customer to make a further purchase. Only within that framework can an additional item (the reward) then be acquired using the points. According to the CJEU, however, an obligation on the part of the supplier is necessary for a voucher to exist at all.

It is noteworthy in this context that the Advocate General stated in her Opinion of September 11, 2025, that redeeming the points merely results in a price reduction on a future purchase. This "second purchase" is discounted, even if redeeming the points leads to a selection of physical rewards and the customer receives both the purchased goods and a reward. This statement is very helpful in practice and suggests that, according to the Advocate General, only the basis for calculating the price of the "second purchase" changes. The CJEU appears to follow this line of reasoning in para. 25 of its judgment. There, it states that classification as a voucher is excluded for instruments that merely entitle the holder to a price reduction on a subsequent purchase.

04 I VAT Treatment of Virtual Currency in Online Games

CJEU, Judgment of March 5, 2026 – Case C-472/24 – MB "Žaidimų valiuta"

The trade in virtual goods or currencies is increasing in practice, and it is apparent that the VAT Directive has not yet been adapted to this. The case in question concerned a "currency" (game gold) for an online computer game.

Facts of the Case

The Lithuanian company MB "Žaidimų valiuta" (MB) operates a service that allows users of online video games to exchange virtual currency units purchased through the service for conventional currencies (such as euros).

The Lithuanian tax authority took the view that this activity was subject to value-added tax. In particular, the dispute centered on whether the exchange of video game currency units should be classified as a tax-exempt financial service under Article 135(1)(e) of the VAT Directive (VAT exemption for foreign exchange and means of payment transactions), and how the tax base should be determined in this context.

In addition, the question arose as to whether such virtual currencies should be regarded as multi-purpose vouchers within the meaning of Article 30a of the VAT Directive, which would have specific tax implications.

The Lithuanian request for a preliminary ruling thus sought to clarify whether the exchange of purely in-game units of a video game currency is exempt from tax and whether the provisions on vouchers are applicable.

Court's reasoning

The CJEU ruled that the in-game gold was not eligible for tax exemption under Article 135(1)(e) of the VAT Directive.

In particular, the in-game gold is not a "virtual currency" within the meaning of Article 135(1)(e) of the VAT Directive.

The exemption for transactions "relating to foreign exchange, banknotes, and coins" requires that the medium in question be accepted as a means of payment, i.e., that it can at least be used between third parties as consideration for services.

By contrast, the video game currency units at issue here can only be used within a specific game. They have no general payment function and no legal or market exchange value outside the game. Thus, the "function as a means of payment" is lacking. The exchange of in-game currency for euros is therefore not a tax-exempt financial service, but a taxable service.

Virtual video game currency units are also not multi-purpose vouchers, because a voucher must confer a right to the delivery of specific future services. The virtual currency, on the other hand, is merely a game object whose use and value are determined by the game operator.

The final economic consumption and the VAT allocation upon the use of such units are also not clearly determinable, so that the provisions on multi-purpose vouchers cannot apply.

Since the service is taxable, the tax base for the transactions must be the consideration received by the provider – that is, the difference between the purchase and sale price or the conversion fee, depending on the specific business model.

Please note:

The CJEU ruled that the exchange of virtual currency used exclusively within a game for conventional currencies is subject to VAT and that no tax exemption under Article 135(1)(e) of the VAT Directive applies. Similarly, it was found that this does not constitute a multi-purpose voucher within the meaning of Article 30a of the VAT Directive. The Advocate General had addressed the issue of the application of the margin scheme in great detail in her Opinion of September 11, 2025. She raised the interesting question of whether this scheme should continue to apply only to the trade in second-hand goods and whether it could still be based on the historical distinction between supplies of goods and services, given that, due to technological developments, services are now also traded in the same way as goods.

This applies to items in a computer game (which are electronic services from a VAT perspective) just as much as, for example, the trade in electronic works of art via non-fungible tokens (NFTs) or in admission tickets (which are also to be regarded as services under VAT law). Interestingly, she then also concluded that Articles 311 et seq. of the VAT Directive should also apply to tradable services, because the decisive factor is that these services are traded on a secondary market in a manner comparable to ordinary second-hand goods. The CJEU did not even devote a single sentence to these considerations; apparently, it was of the opinion that it was the task of the EU legislature to enact such a far-reaching amendment.

05 I VAT Liability for Telematics Services Provided by a Commissioned Association

GCEU, Judgment of February 25, 2026 – Case T-575/24 – Digipolis

Facts of the case

In 2003, the City of Ghent (Belgium), the Ghent Public Social Welfare Center, the City of Antwerp, and the Antwerp Public Social Welfare Center (collectively: founding members) established Digipolis, a legal entity under public law, in the form of a commissioned association that possesses legal personality and to which administrative authority was delegated. Digipolis provided telematics services (telecommunications and information technology) and made related supplies of computer hardware to its members and third parties. The central question was whether these services, which an association provides to its members and finances through cost allocations, are to be classified as taxable transactions within the meaning of the VAT Directive.

The referring Belgian court sought, in particular, to determine whether the entity should be regarded as a "taxable person" within the meaning of Article 2(1)(c) and Articles 9 to 13 of the VAT Directive, and whether there was a direct link relevant for tax purposes between the supplier and the recipient of the services.

Court's reasoning

According to the General Court, a taxable transaction requires a direct link between the supply and the consideration. Such a link exists where there is a legal relationship between the supplier and the recipient in which reciprocal services are exchanged and the remuneration received constitutes the actual consideration for the service.

The element of the "legal relationship" must be interpreted broadly in order to ensure the principle of VAT neutrality. A comprehensive assessment of all circumstances of the individual case is decisive; in particular, it is irrelevant whether the fees were calculated strictly in accordance with market principles, as long as they were determinable in advance and established according to fixed criteria.

Public-law entities may also be subject to tax under Article 9 of the VAT Directive, provided they engage in activities that are of an economic rather than a sovereign nature. Cooperation among public entities does not, in and of itself, preclude tax liability.

The association in question provided its members with specifically definable services for which contributions were collected based on criteria established in advance. These contributions constituted consideration, meaning that a taxable transaction had taken place.

The public nature of the participating institution does not preclude this, as the activities were functionally of an economic nature.

Please note:

A public-law association that provides its members with predictable, mutually initiated services in exchange for cost-sharing engages in a taxable economic activity. The decisive factor is the direct connection between the service and the consideration – not the organizational form or the public mandate. In Germany, it should also be noted in this context that the transitional provision (Section 27(22a) of the German Value Added Tax Act (UStG)) regarding the introduction of Section 2b UStG on the entrepreneurial status of legal entities under public law is currently in effect until December 31, 2026. Whether this will be extended again is currently uncertain.

06 I Taxability of Intra-Community Acquisitions in the Event of an Erroneous Tax Declaration

GCEU, Judgment of February 25, 2026 – Case T-638/24 – Austrian Tax Office

Facts of the case

D GmbH (D), an Austrian company, purchased goods from Austrian suppliers and had them transported directly to other EU member states (the Czech Republic and Italy). In connection with these purchases, it provided the suppliers with its Austrian VAT identification number (VAT ID No.). The suppliers then issued invoices to D with Austrian VAT for the delivery of these goods. For the purposes of its tax returns, D argued, on the one hand, that this VAT was deductible as input tax and, on the other hand, that the purchases in question were not intra-Community acquisitions subject to tax in Austria.

As part of a tax audit of D, the tax authorities issued VAT assessment notices against her for the disputed years 2011 through 2015. In their view, these transactions constituted intra-Community acquisitions of goods. D had used its Austrian VAT ID number for the purposes of these transactions and had not demonstrated that these acquisitions were subject to VAT in the Member State where the dispatch or transport of the goods ended. Therefore, these acquisitions are taxable in Austria pursuant to Art. 3(8) of the Annex (Internal Market) to the 1994 VAT Act, which implements Art. 41 of the VAT Directive. Furthermore, the corresponding intra-Community supplies are exempt from VAT, and the suppliers therefore wrongfully charged this tax for these supplies. However, pursuant to Section 11(12) of the 1994 VAT Act, which implements Article 203 of the Directive, the suppliers were liable for this tax. In this regard, Tax Administration D denied the input tax deduction for the VAT shown on the relevant invoices.

The Austrian Administrative Court considered such double taxation to be contrary to EU law, which is why the case was referred to the CJEU (or the General Court) on October 23, 2025, for a preliminary ruling.

Court's reasoning

The General Court clarified that Article 203 (tax liability due to incorrect tax statement) and Article 41 (default acquisition upon use of an incorrect VAT ID number) are two independent mechanisms and are applicable concurrently.

Article 203 protects the tax authorities from incorrectly reported tax that could mislead other market participants. Article 41 serves to ensure that the purchase is taxed when the purchaser uses a VAT identification number from a Member State in which the goods do not actually arrive.

The double VAT charge does not violate the principle of tax neutrality. Neutrality is preserved because suppliers can correct the erroneous invoices and the purchaser can then reclaim the unduly paid tax . The financial burden arises not from EU law, but from the company's decision to use the incorrect VAT identification number. Thus, there is no violation of the principle of proportionality. The creation of a tax liability under Article 203 of the VAT Directive, for which the supplier of intra-Community supplies who wrongfully charged VAT is liable, is also not equivalent to the taxation of those supplies with VAT. That tax liability arises not because of a transaction subject to VAT, but solely because the VAT is shown on the invoice in question.

In light of the foregoing, Articles 40, 41, and 203 of the VAT Directive, as well as the principles of VAT neutrality and proportionality, must be interpreted that they do not preclude the application of a national rule which subjects an intra-Community acquisition in the Member State where the dispatch or transport of the goods begins to VAT on the ground that the acquirer made that acquisition under the VAT identification number issued to him by that Member State, where such an acquisition is accompanied by an intra-Community supply exempt from VAT, for which a tax liability exists in that Member State under the rule established in Article 203 of the VAT Directive due to the erroneous charging of VAT on that supply.

In this specific case, the customer must first provide evidence of purchase taxation in the other EU member states (including Italy and the Czech Republic) before the purchase taxation in Austria can be reversed without a corresponding input tax deduction (cf. in Germany: Section 3d.1(2) of the VAT Implementation Regulation: Taxation is deemed proven if it can be verified from the tax records that the transaction was included in a tax return filed in the other Member State and resulted in taxation there).

According to the General Court, the invoice with Austrian VAT was also an incorrect invoice under Art. 203 of the VAT Directive, which does not entitle the recipient to an input tax deduction. Although the tax could be eliminated by correcting the invoices, it must be noted that D would not be required under civil law to issue a new invoice because the invoice lacked a foreign VAT identification number at the time of issuance.

It becomes extremely difficult for the recipient of the service to recover the sales tax paid to the supplier. If the supplier fails to refund the VAT shown on the original invoice to the customer due to a lack of invoice correction, the customer's only recourse is to assert a direct claim with their tax office (see Federal Fiscal Court (BFH) ruling of December 5, 2024, V R 11/23).

Whether such a case should be resolved similarly following the introduction of the so-called "quick fixes" on January 1, 2020 (VAT ID number as a material requirement) will become clear after the General Court's decision in Case T-689/25. In this case, the Austrian Federal Finance Court (Ref.: RE/2100001/2025) referred the following facts to the CJEU along with four questions:

A British company (British Company = BC) purchased goods from an Austrian supplier (L), who transported the goods to Sweden. BC did not provide L with a VAT ID number. L subsequently issued an invoice with Austrian VAT, the refund of which BC sought through the refund procedure. The tax authority rejected this, arguing that the refund procedure does not apply to supplies that are or could be tax-exempt. Since the supply could be tax-exempt, no refund could be granted. BC subsequently provided L with its Irish VAT ID number – valid at the time of the supply – and requested that L correct the invoice. However, L continued to refuse.

The Federal Finance Court subsequently referred the following questions to the CJEU:

1. Is the provision of a VAT identification number of a Member State other than the Member State in which the dispatch or transport of goods begins, in accordance with Article 138(1)(b) of Council Directive 2006/112/EC of November 28, 2006, as amended by Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonization and simplification of certain provisions of the VAT system relating to the taxation of trade between Member States, a substantive requirement for the VAT exemption of an intra-Community supply, such that the supply is taxable in the absence of the disclosure of such a VAT identification number?

2. If the answer to the first question is in the affirmative and the intra-Community supply is therefore taxable: Does this VAT fall under Article 5 of the Eighth Council Directive 79/1072/EEC of December 6, 1979, and is there a right to deduct input tax or a right to a refund of input tax in this regard?
3. If the answer to the second question is in the affirmative, is it permissible to correct the original invoice in the event of the subsequent disclosure of a VAT identification number – issued and valid at the time of supply – from a Member State other than the Member State in which the dispatch or transport of the goods begins, or does the recipient's right to deduct input tax or claim a refund of input tax preclude such a correction?
4. If the answer to the third question is in the affirmative and a correction is permissible: Does such a correction have retroactive effect to the time of the transaction (ex-tunc correction) or only as of the time of the correction (ex-nunc correction)?

Since the referral was not submitted to the CJEU until September 18, 2025, a decision is likely to be delayed until 2027.

Please note:

In practice, significant difficulties can arise if a customer from the same country instructs their supplier to deliver the purchased goods to another EU country, provided the customer uses only their domestic VAT ID number when placing the order. In this case, it is important to instruct the company's sales department that a delivery abroad – even if it is only within the EU – must be coordinated with the tax department, even if the VAT risks associated with invoicing with domestic VAT arise on the customer's side.

07 I Value-Added Tax and Transfer Companies

BFH, Judgment of November 20, 2025 – V R 10/23

Facts of the case

The plaintiff, a limited liability company (GmbH) authorized to promote employment, operated as a transfer company during the disputed years 2014 through 2016. For companies that had downsized their workforce, it took over operationally independent units pursuant to Section 111(3) of the Social Code Book III (SGB III). The basis for each case was:

a. a reconciliation of interests/social plan between the company and the works council,

b. an implementation agreement between the company and the plaintiff, and

c. a tripartite agreement between the company, the plaintiff, and the employees.

The plaintiff hired the affected employees under fixed-term transfer employment contracts. The companies paid the plaintiff fees for this, including top-up payments in accordance with the provisions of the social plan. The point of contention was whether these services should be classified as VAT-exempt "services closely linked to social welfare and social security" under Article 132(1)(g) of the VAT Directive.

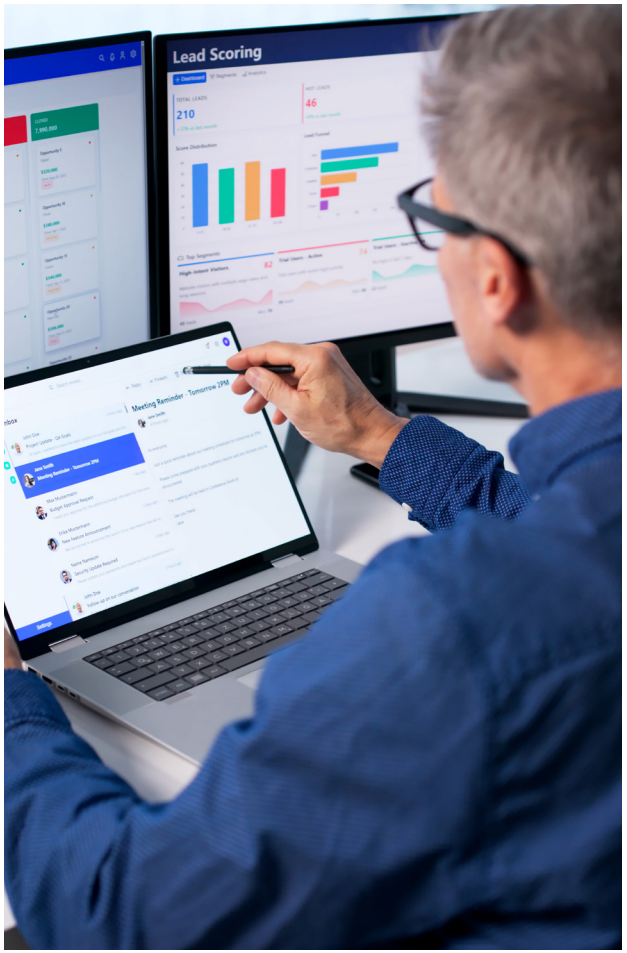
The Baden-Württemberg Fiscal Court affirmed that a service was provided to the companies for consideration and denied the tax exemption.

From the grounds for the decision

The Federal Fiscal Court (BFH) confirms that the plaintiff provides a taxable service to the companies. The plaintiff assumes organizational and human resources management tasks within the scope of the transfer measures. These tasks resulted from the implementation agreement, which obligated her to carry out the transfer measures in the interest of the company.

The fees paid by the company – including the supplementary amounts – constitute consideration for this service, not merely pass-through payments for employees. Thus, there is a clear exchange of services.

The Federal Fiscal Court (BFH) denies the VAT exemption. It justifies this on the grounds that the plaintiff primarily provides its services to the employer, not to the employees.



The purpose of the service is corporate restructuring, that is, to alleviate the burden on the company during staff reductions. Although the activity is embedded in social policy, it is not predominantly characterized by social welfare.

A tax exemption under Art. 132(1)(g) requires that the service be closely linked to social welfare or social security and directly benefit the group of persons entitled to it. This is not the case here.

The Federal Fiscal Court emphasizes that the company's motivation under social plan law does not alter the classification under VAT law; the factual content of the service remains decisive. The classification of the supplementary payments is essential: these are paid to the plaintiff based on her contractual obligations to the company. They do not serve to directly support the employees, but rather constitute components of remuneration for the tasks performed by the plaintiff on behalf of the company ( ). As such, they increase the VAT tax base.

Please note

At its core, the dispute concerned so-called "remanence costs" – received by a transfer company and paid by former employers – as taxable consideration for services. Apparently, both the Bavarian and Baden-Württemberg tax authorities had previously held the legal view (see the lower court's ruling) that remanence costs were not subject to value-added tax. Consequently, these payments were treated as non-taxable remuneration, so that the plaintiff, as a transfer company, naturally did not (initially) charge VAT on them in its invoices, and the recipients of the services – the respective former employers – did not pay this amount as part of the invoiced price. The Federal Fiscal Court's ruling has now definitively clarified that the assumption of responsibility for operating an organizationally independent unit in connection with a corporate restructuring constitutes an exchange of services for the former employer based on an implementation agreement concluded between the former employer and the employer, and that the top-up amounts are also included in the consideration.

The activities of a transfer company vis-à-vis the former employer are therefore subject to value-added tax. A tax exemption as a social welfare benefit is ruled out because the service is primarily related to restructuring and directed at the employer, not at the social welfare support of the employees.

08 I VAT Treatment of Membership Fees for Non-Profit Sports Clubs

BFH, Judgment of November 13, 2025 – V R 4/23

The subject of the ruling was the question of whether a non-profit sports club is entitled to an input tax deduction or whether its output transactions, as tax-exempt transactions, can preclude the input tax deduction arising from the construction of a grass field.

Facts of the case

The club operated several sports, including a commercially managed men's first-division soccer team for which admission fees were charged. In addition, the club constructed an artificial turf field with input tax deduction, supported by a municipal grant. To finance this, it collected membership fees and applied the reduced VAT rate of 7% on a flat-rate basis. However, the tax office denied the input tax deduction and declared membership fees tax-exempt pursuant to Section 4 No. 22(b) of the German Value-Added Tax Act (UStG) (participation fees for sporting events), based on the Federal Ministry of Finance (BMF) letter from 2019. The tax court largely agreed with the tax office but allowed a portion of the input tax deduction due to use by the men's team. The appeal filed by the club led to the reversal of the judgment and its remand to the tax court for a new decision.

From the grounds for the decision

a. Taxability of membership dues

The Federal Fiscal Court (BFH) confirmed its established case law (e.g., V R 27/04) and the case law of the European Court of Justice ("Kennemer Golf," C-174/00). According to this, membership fees constitute consideration for services provided by the club, regardless of the individual use by the members.

The administrative practice of generally treating membership fees as non-taxable therefore contradicts EU law (VAT Directive Art. 2) and the case law.

b. Distinction from the tax exemption under Section 4(22)(b) of the German Value Added Tax Act (UStG)

Section 4(22)(b) of the German Value Added Tax Act (UStG) exempts organized sporting events, e.g., supervised training, but not all services provided by the association or the mere granting of access to sports facilities.

Club membership encompasses a wide range of rights and activities, not individual, time-limited events.

c. Failure to examine individual services

The Finance Court did not make clear findings as to which services were specifically provided and whether these fall within the scope of the tax exemption.

Therefore, the Federal Fiscal Court (BFH) could not conclusively decide whether a tax exemption under Section 4(22)(b) of the German Value Added Tax Act (UStG) applied.

The case has therefore been remanded to the tax court for a new hearing to determine exactly which services were provided and whether a tax exemption applies.

Please note

In fact, the core issue regarding sports clubs and value-added tax could be resolved by the Federal Fiscal Court ( ) simply by determining that nonprofit sports clubs, as businesses, provide services to their members for consideration, which could be exempt from value-added tax under EU law (Article 132(1)(m) of the VAT Directive).

Had the legislature made use of this provision, the German legislature's conduct – which has been in violation of EU law for more than 15 years – would finally have come to an end. Thus, the uncertainty regarding how to claim input tax credits for clubs continues unabated. The case decided here concerned the input tax credit for the construction of an artificial turf field.

Unfortunately, the Federal Fiscal Court (BFH) was not yet able to decide whether the club had generated tax-exempt or taxable transactions.

For clubs, this still means: Membership fees are taxable under EU law (but not under German law – there is still an option here) – separately identifiable sporting events may be tax-exempt if they are conducted under supervision and organization.

09 | Outsourcing of match operations by a sports club

BFH, Judgment of November 6, 2025 – V R 36/23

Facts of the Case

A nonprofit sports club constructed a stadium grandstand and floodlight system on municipal land and claimed input tax credits for these expenses. To limit its liability, the club transferred the operations of its men's soccer team to a limited liability company (GmbH) it had established (A-GmbH) and provided the grandstand, the floodlights, and the team's license to the company free of charge. Based on a change in circumstances pursuant to Section 15a of the German Value-Added Tax Act (UStG), the tax office demanded a correction of the originally claimed input tax deduction – partly in full, partly at half the amount. The club's lawsuit before the tax court failed: the court found that there was a VAT-liable transfer of value without consideration under Section 3(9a) of the German Value Added Tax Act (UStG). Furthermore, it considered a correction justified due to the lack of an economic group.

From the grounds for the decision

The Federal Fiscal Court (BFH) considered the plaintiff's appeal to be unfounded and dismissed it, as the decision of the Fiscal Court was correct for other reasons (Section 126(2) and (4) of the Fiscal Court Rules).

The FG had wrongly assumed that the plaintiff's provision of the stadium grandstand and floodlight system to A-GmbH free of charge was taxable as a gratuitous transfer of value under § 3 (9a) No. 1 UStG.

A taxable supply of goods or services pursuant to § 3 (9a) No. 1 of the German Value Added Tax Act (UStG) does not exist, as the primary focus in achieving the purpose of the outsourcing is not on interests unrelated to the business but rather on interests that remain business-related. A taxable withdrawal does not therefore exist.

Annual membership fees for training or game participation in clubs are to be regarded as consideration for VAT purposes, meaning that the club is therefore a business entity.

The Federal Fiscal Court (BFH) first confirmed the Fiscal Court's (FG) view that a tax group pursuant to § 2 (2) No. 2 of the German Value Added Tax Act (UStG) did not exist between A-GmbH and the club. The decisive factor here was that A-GmbH was not integrated into the club's business, either financially or economically, to such an extent that services provided free of charge (such as the provision of stands, floodlights, and a playing license) could form an organizational unit. Such services were not sufficient to establish economic integration.

Despite the elimination of withdrawal taxation, the provision free of charge nevertheless constituted a "change in circumstances" because the use had an impact on the corporate structure. This justified an input tax adjustment pursuant to § 15a UStG (contrary to the assessment by the Finance Court).

10 | On the exercise of the input VAT deduction

BFH, Decision of February 26, 2026 – V B 11/25

The decision concerns the question of in which tax period an input VAT deduction is possible if, although an invoice is received during the original service period, it does not contain all the information required for a valid invoice, and the corrected invoice is only submitted later.

The BFH allowed the appeal because, based on the CJEU judgment of February 11, 2026, T-689/24 (see February 2026 Newsletter, page 1), changes might arise in this regard.

Tune in starting April 10, 2026: VAT podcast "VAT to go" – Episode 11 – New EU case law from February 2026: Reverse charge and errors in input tax deduction

The podcast explores the additional possibilities that may arise regarding input tax deduction as a result of the General Court's judgment of February 11, 2026, and how this could affect invoices at the turn of the year. In addition, another General Court ruling from February 25, 2026, is the subject of particularly intense discussion in practice because it concerns the consequences of a foreign VAT ID number not being provided in an intra-Community supply. 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 General Court justifies its two judgments and what significance the judgments may have in practice. Available for listening starting April 10, 2026.

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On **May 6, 2026**, it will be that time again: Our annual VAT conference will summarize the most important changes and practical issues – offered in a **hybrid** format for maximum flexibility.

Rainer Weymüller, former presiding judge at the Munich Finance Court and Of Counsel at KPMG, will summarize new rulings by the European Court of Justice, the Federal Finance Court, and the finance courts and provide practical advice. Mathias Szabó from the VAT department of the Ministry of Finance of North Rhine-Westphalia will report – in a non-official capacity – on what is currently occupying the tax authorities.

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