KPMG

VAT News: Hot topics and issues in indirect taxation

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International VAT Developments

TaxNewsFlash Indirect Tax

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01 I VAT Treatment of Transfer Pricing Adjustments in Connection with Repair Costs

CJEU, judgment of 13 May 2026 – C 603/24 – Stellantis Portugal

Transfer pricing adjustments within multinational groups – for instance, to ensure a target profit margin – are common in practice. From a VAT perspective, the recurring question is whether such adjustments constitute consideration for a separate supply or whether they merely adjust the taxable amount of an earlier supply.

Facts of the case

Stellantis Portugal, S.A. (hereinafter referred to as the claimant) operates in the automotive trade. Its legal predecessor, General Motors Portugal (GMP), was part of the General Motors group during the year at issue (2006), a group engaged in the manufacture and distribution of vehicles as well as spare parts and accessories.

The group structure included Original Equipment Manufacturers (OEM), which manufactured products and supplied them to national sales companies (NSC) or national sales organizations (NSO). These entities, in turn, distributed the products within defined geographic markets. Within the supply chain, GMP performed the functions of an NSC/NSO and purchased vehicles from European OEM within the General Motors group. These vehicles were subsequently resold to independent Portuguese dealers, who in turn sold them to end customers.

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In the event of manufacturing defects, end customers approached the authorized dealers to have the defects remedied. The Portuguese dealers then invoiced GMP for the repair services and accounted for the corresponding VAT. Such vehicle repairs could arise from defects in the manufacturing process of vehicles or components, from warranty-covered issues, or from roadside assistance measures.

GMP reported to the European OEM the costs incurred in connection with the distribution of vehicles and spare parts. These costs included, inter alia, the repair costs described above as well as GMP's own operating expenses, such as personnel, electricity, and marketing costs.

Based on the identified costs, adjustments were made to the prices of vehicles sold by the European OEM to GMP. The underlying intra-group pricing was governed by a transfer pricing agreement concluded in 2004. Under this agreement, transfer prices for vehicles, spare parts, and accessories were initially determined by applying a discount to external sales prices (i.e. sales to third parties such as dealers). At the end of the financial period, transfer prices were adjusted to ensure a predefined profit margin for the NSC/NSO. These adjustments were documented by means of credit or debit notes issued by the OEM to GMP and took into account, among other factors, the aforementioned repair costs as well as other operating expenses.

Following a tax audit, the Portuguese tax authorities characterized the assumption of the repair costs as the provision of repair services by the claimant to the OEM. They treated the transfer pricing adjustments as consideration for such services and assessed VAT in the amount of approximately EUR 1.5 million. While the court of first instance upheld GMP's claim, the appellate court confirmed the tax authorities' position. The Portuguese Supreme Administrative Court subsequently referred the question to the CJEU as to whether the transfer pricing adjustments described constitute a "supply of services for consideration" within the meaning of Article 2(1) of the Sixth Directive (77/388/EEC).

Grounds of the decision

In the circumstances of the present case, the referring court essentially raised the question whether it should be assumed that GMP supplied repair services to the OEM concerned, for which the amounts resulting from the transfer pricing adjustments would constitute, in whole or in part, the consideration.

According to the CJEU, it is for the referring court, which has exclusive jurisdiction to assess the facts, to determine the nature of the transactions at issue in the main proceedings. Nevertheless, the Court of Justice must provide the referring court with guidance on the interpretation of EU law that may assist it in resolving the case.

In that regard, the CJEU notes, first, that the only legal relationship between GMP and the OEM referred to by the national court is the relationship arising from the 2004 agreement. That agreement governed the determination of transfer prices for vehicles sold by the OEM to GMP and was intended, through the adjustment mechanisms provided therein, to ensure that GMP achieved a predetermined profit margin.

None of the clauses of the 2004 agreement referred to in the order for reference indicates that a legal relationship existed between GMP and the OEM under which GMP was obliged to assume responsibility for the repair of the vehicles acquired from those OEM in return for remuneration.

Moreover, nothing in the case file suggests that there existed a legal relationship between GMP and the OEM within the framework of which reciprocal supplies were exchanged, consisting, on the one hand, of repair services provided by GMP to the OEM and, on the other hand, of payment for those services.

Should the referring court nevertheless conclude that such a legal relationship did exist between GMP and the OEM, it would still be necessary to determine whether the adjustments at issue in the main proceedings constitute the actual consideration for identifiable services, that is to say, whether those adjustments represent remuneration paid to GMP for the provision of repair services.

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In that respect, it must be noted that uncertainty as to the existence of consideration is liable to break the direct link between the service supplied to the recipient and the remuneration potentially received. In order for such a link to be established, the remuneration must neither be granted on a voluntary basis nor depend on chance or be difficult to quantify (see, to that effect, judgment of 4 September 2025, C 726/23).

In the present case, it is apparent from the order for reference that the adjustments at issue in the main proceedings were calculated taking into account not only the costs of the repairs carried out by independent dealers and invoiced by them to GMP, but also GMP's operating expenses. Accordingly, the costs of repairing the vehicles in question appear to constitute only one of the parameters considered in determining those adjustments. Depending on the level of those overall costs in relation to the initial transfer prices, the adjustments could therefore result not only in credit notes but also in debit notes issued by the OEM to GMP.

Furthermore, the various costs incurred by GMP in the course of distributing the vehicles were taken into account solely to ensure the achievement of the predetermined profit margin. Once that margin had been reached, it does not appear that GMP was ensured reimbursement of all such costs by the OEM, in particular those relating to the repair of the vehicles concerned.

In light of the foregoing considerations, and subject to verification by the referring court, it appears that any link that may exist between potential repair services supplied by GMP to the OEM and the adjustments to the transfer prices of those vehicles is, at most, indirect.

As regards, secondly, the argument put forward by the Portuguese Government that GMP acted, by assuming the repair costs, on behalf of the OEM and as part of a supply of services provided by the dealers to those OEM, such that the allocation of those costs to the OEM should be regarded as a taxable transaction, it suffices to note that there is nothing in the documents before the Court to support the view that GMP acted in the context of such a service or on behalf of a third party.

Thirdly and finally, in the event that the referring court were to conclude that the adjustments at issue in the main proceedings do not constitute consideration for repair services supplied by GMP to the OEM, but rather a subsequent adjustment of the price paid by GMP on the acquisition of the vehicles from the OEM, it should be noted – as the Advocate General essentially stated in points 56 to 62 of her Opinion – that it will, where appropriate, be for the competent national authorities to assess the effects of such an adjustment on the determination of the taxable amount of the transaction consisting in the supply of those vehicles by the OEM to GMP.

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Please note:

In the Arcomet Towercranes case decided in 2025 (CJEU, judgment of 4 September 2025 – C 726/23; see VAT Newsletter August/September 2025), the Court addressed the interaction between VAT and transfer pricing in the context of intra-group services provided by a parent company to its Romanian subsidiary, remunerated based on the transactional net margin method (TNMM). In that case, the CJEU clarified that remuneration determined on that basis may, in principle, qualify as consideration for VAT purposes, provided that a supply of services can be established (by contrast, the Advocate General in the present case stated in para. 63 of her Opinion of 15 January 2026 – C 603/24 that case C 726/23 concerned merely notional services). The remuneration mechanism had been agreed in advance, and the variable nature of the contractual arrangement did not, in itself, undermine the direct link between the supply and the consideration.

By contrast, in the present Stellantis case, the key issue was whether a contractually agreed subsequent adjustment of the purchase price for goods could give rise to a distinct supply of services for consideration. The CJEU ultimately concluded that the transfer pricing adjustments at issue do not, in principle, constitute consideration for a taxable supply of services. Instead, the Court referred to Article 11 of the Sixth Directive 77/388/EEC (now Article 73 of the VAT Directive) regarding the determination of the taxable amount. To the extent that such adjustments are to be characterized as a subsequent change in the purchase price paid by GMP to the OEM, it is for the national authorities to assess their impact on the taxable amount of the underlying supplies of vehicles. It would have been particularly interesting to see how the CJEU would have ruled had the referred question focused specifically on that aspect.

Where a contractually agreed subsequent purchase price adjustment leads to a correction of the taxable amount of the original supply, this may have practical implications. In the case of a price reduction, this could result in a corresponding downward adjustment of input VAT previously deducted; conversely, a price increase could give rise to an increased input VAT deduction. Practical challenges may arise, in particular, where lump-sum compensation payments are used that cannot be clearly allocated to individual transactions.

For businesses operating in similar structures, this means that the VAT treatment depends to a significant extent on the contractual framework and its documentation. Only where a clearly defined legal relationship exists, under which one entity provides identifiable services in return for clearly attributable consideration, can a separate taxable supply of services be assumed for VAT purposes.

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02 I Calculation and Assessment of Default Interest on VAT

CJEU, judgment of 30 April 2026 – C 544/24 – BUAB

Default interest on tax arrears constitutes a key instrument in many Member States to ensure the timely payment of taxes. In Lithuania, the default interest rate for tax liabilities is statutorily defined and is based on the yield of government bonds plus seven percentage points. Individual remission or reduction is – except for narrowly defined exceptional circumstances – excluded. In the present case, the CJEU had to examine whether such a rigid system is compatible with Article 273 of the VAT Directive and Article 325 TFEU, and whether default interest may be classified as a "criminal penalty" within the meaning of the Charter of Fundamental Rights of the European Union (hereinafter the "Charter").

Facts of the case

In the course of a tax audit, the Lithuanian tax authorities found that BUAB (a Lithuanian company) had unduly claimed input VAT based on legally invalid invoices and had participated in VAT fraudulent transactions during the period from 2012 to 2016. Consequently, by assessment notice dated 4 September 2018, the authorities imposed additional VAT of approximately EUR 6.5 million, default interest of approximately EUR 2.4 million, and a fine of EUR 1.8 million.

Following judicial confirmation of these tax assessments, the company repeatedly applied for the remission of the default interest and the fine. The tax authorities rejected these requests on the grounds that the statutory requirements for remission under the Lithuanian Law on Tax Administration were not met.

Under national law (Articles 95–99 of the Law on Tax Administration), default interest is levied on taxes not paid or paid late. BUAB argued that a substantial part of the interest had a punitive character and, in combination with the fine, resulted in a disproportionate cumulative burden. Furthermore, it submitted that the interest – at least to the extent of the seven-percentage-point surcharge – should be regarded as a criminal penalty subject to Articles 49(3) and 50 of the Charter.

The referring court requested a preliminary ruling from the CJEU on whether:

- Article 325 TFEU, Article 273 of the VAT Directive and Article 50 of the Charter must be interpreted as precluding national legislation under which default interest for late payment of taxes may be imposed where such interest includes a punitive element relating to the same tax infringements

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that are also subject to criminal proceedings, without providing for coordination rules to ensure that the overall burden resulting from the accumulation of proceedings is limited to what is strictly necessary, and without guaranteeing that the severity of all penalties imposed remains limited to what is strictly necessary in relation to the seriousness of the offence concerned;

- Article 325 TFEU, Article 273 of the VAT Directive and Article 49(3) of the Charter must be interpreted as precluding a system for applying default interest on late payment of taxes which, irrespective of the nature and severity of the infringements, provides for a fixed punitive component of such interest that cannot be reduced – i.e. where it is not possible to set a lower interest rate than the statutory rate or to waive the punitive component.

Grounds of the decision

The CJEU held the first question, concerning the principle of ne bis in idem ("not twice for the same matter"), to be inadmissible, as no final decision had yet been rendered in the criminal proceedings. Article 50 of the Charter protects only against a second prosecution or penalty following a final conviction or acquittal.

With regard to the second question, the CJEU recalled that three criteria are relevant in assessing whether a sanction is of a criminal nature: the legal classification of the offence under national law, the nature of the offence, and the degree of severity of the penalty that the person concerned is liable to incur.

As regards the first criterion, namely the classification of the offence under national law, it follows both from the wording of Article 95(1) of the national Law on Tax Administration and from the relevant national case law that, under Lithuanian law, the imposition of default interest on tax arrears arising from non-payment or late payment of tax is not regarded as a criminal sanction. Furthermore, it is apparent from the documents before the Court that such interest is levied in the context of administrative proceedings. While Lithuanian law also provides for tax offences that may give rise to criminal proceedings, the corresponding penalties are imposed in separate and independent proceedings.

With respect to the second criterion, relating to the nature of the offence, it must be examined whether the measure in question pursues, inter alia, a punitive purpose. In that regard, the Court reiterates that a measure with a punitive purpose is of a criminal nature, and that the mere fact that a measure also pursues a preventive objective does not preclude it from being classified as a criminal sanction. Indeed, it is inherent in criminal penalties that they aim both to punish and to deter unlawful conduct. By contrast, a measure intended solely to compensate for damage caused by the offence is not of a criminal nature (see CJEU judgments of 20 March 2018, C 524/15, and of 22 June 2021, C 439/19).

In the present case, it follows from the order for reference and from the written observations submitted to the Court that, under the Law on Tax Administration, default interest serves both a preventive and a compensatory function. On the one hand, it is intended to encourage taxpayers to pay VAT within the prescribed period or as soon as possible thereafter, thereby also contributing to the proper collection of VAT. On the other hand, such interest serves to compensate for the financial loss suffered by the State as a result of non-payment or late payment of taxes.

In this respect, the Court has previously held that default interest serves both a preventive purpose, by incentivising taxable persons to comply with their tax obligations promptly after the statutory deadlines have expired, and a compensatory purpose, by making good the financial losses incurred by the State due to non-payment or late payment of taxes (see, to that effect, CJEU judgment of 13 October 2022, C 1/21, paras. 89 to 91).

As regards the third criterion, namely the severity of the penalty, the documents before the Court did not indicate that default interest such as that at issue in the main proceedings would be of such a degree as to warrant classification as a criminal sanction. In particular, as regards the argument that part of the default interest, due to the seven percentage point surcharge applied to the base rate, has a "punitive character", the Court notes that this argument is based on an interpretation of the national legisla-

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tion at issue that differs from that presented by the referring court. The order for reference does not indicate that the default interest at issue is of a punitive nature (see CJEU judgment of 28 February 2018, C 387/16).

In any event, according to the Court's case law, default interest is intended to mitigate the effects resulting from exceeding payment deadlines and to offset the advantage improperly obtained by the economic operator through the delayed settlement of a tax liability, rather than to penalise such delay (see, to that effect, CJEU judgment of 5 December 2024, C 506/23).

In light of the foregoing considerations, and subject to verification by the referring court, none of the three criteria for classifying the default interest at issue in the main proceedings as a criminal sanction appear to be met. Accordingly, insofar as such default interest does not have a criminal nature, it cannot be assessed against Article 49(3) of the Charter.

Finally, the Lithuanian system of default interest was found to be proportionate. The imposition of default interest incentivises timely payment and compensates for the liquidity advantage obtained by the taxpayer in default.

Please note:

The CJEU confirms that a rigid, statutorily defined system of default interest on VAT arrears is, in principle, compatible with Article 273 of the VAT Directive and Article 325 TFEU, provided that the interest serves preventive and compensatory purposes, the interest rate is determined in a transparent and uniform manner, and the overall mechanism does not lead to an evidently disproportionate burden.

According to this judgment, default interest will generally not be classified as a criminal sanction. As a result, the stricter standard under Article 49(3) of the Charter typically does not apply to such interest.

For businesses, this means that, in comparable situations (e.g. undue input VAT deduction or involvement in VAT fraud), reliance on EU law to challenge default interest will be limited. In practice, potential points of challenge are primarily found in the correct application of national law – in particular with regard to the calculation period, the applicable interest rate, and any statutory requirements for remission.

It should be noted, however, that the present judgment does not address cases where no liquidity advantage arises for the taxable person and where there is no allegation of involvement in VAT fraud. The decision is consistent with the CJEU's established approach, according to which there is generally no justification for granting relief to taxable persons involved in fraudulent arrangements.

See also, in this newsletter, the discussion of the German Federal Fiscal Court (BFH), judgment of 11 December 2025 – V R 7/24.

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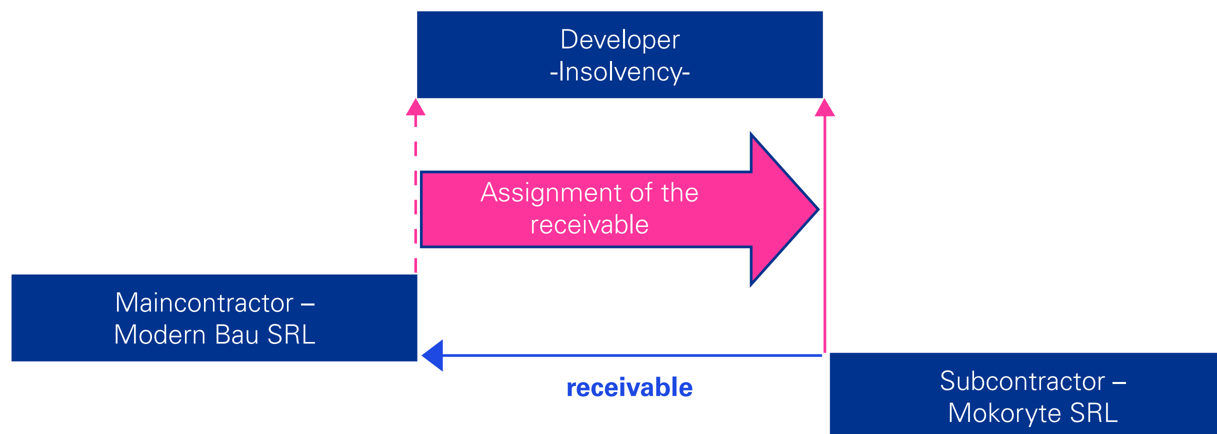
03 I Reduction of the Taxable Amount in the Case of Assignment of Receivables

General Court, judgment of 22 April 2026 – T 233/25 – Mokoryte



In practice, cases involving adjustments to the taxable amount under Section 17 of the German VAT Act are highly diverse. Only recently, the German Federal Fiscal Court (BFH) issued a judgment in which a guarantor repaid part of an advance payment to the recipient of the supply following the insolvency of the supplier. The Court held that the input VAT deduction originally claimed on the advance invoice must be adjusted pursuant to Section 17(2) no. 2 of the German VAT Act even where the repayment is made by a third party (in that case: the guarantor) (BFH judgment of 8 July 2025 – XI R 31/23).

In the present case before the General Court dated 22 April 2026, the key issue was whether a subcontractor (Mokoryte SRL) that acquires, by assignment, a receivable of the main contractor (Modern Bau SRL) vis à vis the developer is entitled to adjust the taxable amount under Article 90(1) of the VAT Directive where the developer fails to pay due to insolvency.

Facts of the case

A property developer concluded a construction contract with Modern Bau SRL (the main contractor) for the construction of a business centre in Cluj Napoca (Romania). The main contractor subcontracted the construction works to Mokoryte SRL (hereinafter Mokoryte). Mokoryte issued proper invoices including VAT to the main contractor for its services.

In 2014, the developer became insolvent. The main contractor filed its claim in the insolvency proceedings. With regard to its liabilities vis à vis Mokoryte, the main contractor partially settled its obligations in cash (approximately EUR 53,000 including VAT). For the remaining outstanding amount, the main contractor assigned to Mokoryte its claim against the developer (amounting to approximately EUR 333,000 including VAT). This assignment was notarised and recognised in the insolvency proceedings. In Mokoryte's accounts, the claim against the main contractor was thereby considered fully settled.

The insolvency proceedings concerning the developer were concluded in 2021 without any payments being made on the assigned receivable. Subsequently, on 9 December 2021, Mokoryte

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issued five credit notes to the developer, relying on Article 287(d) of the Romanian Tax Code, and reduced its declared taxable turnover accordingly. It applied for a refund of the resulting VAT credit balance.

The Romanian tax authorities rejected this approach. According to their view, only the main contractor, as the original supplier vis à vis the developer, could benefit from a reduction of the taxable amount; the subcontractor was not entitled to an adjustment under Article 90 of the VAT Directive.

Following a referral from Romania, the General Court was called upon to clarify whether Article 90(1) of the VAT Directive precludes national legislation under which a subcontractor who acquires a receivable against the developer is denied the right to adjust the taxable amount.

Grounds of the decision

The General Court begins by outlining the underlying supply relationships. It notes that two separate transactions giving rise to taxable supplies were carried out. The first concerned the business relationship between the subcontractor and the main contractor, while the second related to the relationship between the main contractor and the developer. The subcontractor was a third party in the transaction between the main contractor and the developer, whereas the developer was not involved in the transaction between the subcontractor and the main contractor.

With regard to the first transaction, both the cash payments and the assignment of the receivable by the main contractor to the subcontractor must be taken into account when assessing whether the consideration for the taxable supplies between these parties was actually paid. The Court recalls that such an assignment itself constitutes consideration and has an independent economic value (see CJEU judgment of 9 February 2023, C 713/21, paras. 46 and 47).

In this respect, the main contractor settled its liabilities arising from the invoices issued by the subcontractor partly by paying an amount of approximately EUR 53,000 including VAT and partly by entering into an agreement to assign to the subcontractor its claim against the developer for the remaining amount including VAT. This assignment, notarised on 24 July 2015, conferred upon the subcontractor the right to the receivable held by the main contractor. As such, the assignment was not conditional upon the actual payment of the receivable or on the existence of a concrete possibility of future payment by the debtor (the developer).

On 31 August 2021, the subcontractor recorded in its accounting records that the main contractor's liability had been fully settled. It follows from the request for a preliminary ruling that the amounts agreed between the parties covered all invoices issued by the subcontractor to the main contractor. Consequently, the entire initial debt had been discharged.

As a result, the receivable vis à vis the subcontractor must be regarded as fully settled, and therefore no basis exists for that subcontractor, as assignee of the receivable, to reduce the taxable amount in respect of that transaction.

With regard to the second transaction, it is apparent from the request for a preliminary ruling that the developer, against whose assets insolvency proceedings were opened in December 2014, did not pay the invoiced amounts either to the main contractor or to the subcontractor as assignee of the receivable. In respect of that transaction between the main contractor and the developer, a situation of "non-payment" within the meaning of Article 90(1) of the VAT Directive must therefore be acknowledged, which may, in principle, justify a reduction of the taxable amount.

As regards the question of who is entitled to apply such a reduction, it should be noted that the main contractor was the taxable person at the time when the real estate services were supplied – that is, at the point in time when, pursuant to Article 63 of the VAT Directive, the chargeable event occurred and the tax became chargeable.

Furthermore, it follows that, despite the civil-law assignment of the receivable to the subcontractor, the main contractor remained the person liable for the VAT due in respect of the transaction.

Consequently, given that the taxable amount, as defined in Article 73 of the VAT Directive, corresponds to the consideration actually received, the

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main contractor was entitled to reduce the taxable amount so as to reflect the non-payment of the consideration resulting from the insolvency of the developer. This ensures that the tax authorities do not collect a higher amount of VAT than that actually received by the taxable person. With respect to the assigned receivable, the main contractor remains the supplier of the services – i.e. the taxable person at the time the services were supplied and the chargeable event occurred or the tax became chargeable – and thus the party to whom the consideration was owed by the developer.

In the main proceedings, the possibility for the main contractor to adjust the taxable amount arose from the fact that the developer became insolvent and was subsequently removed from the commercial register without having fulfilled its financial obligations vis à vis the main contractor. As the main contractor did not receive any payment from the insolvency estate in settlement of its claim, the non-payment by the developer must be regarded as definitive, given that the receivable had become irrecoverable.

Moreover, it should be emphasized that the status of a taxable person is determined under the applicable tax provisions and that the VAT Directive does not contain any rule permitting the transfer of that status or of the right to adjust the taxable amount by means of a private-law agreement, such as an assignment of receivables.

Finally, the question of which taxable person is entitled to reduce the taxable amount for VAT purposes is governed exclusively by EU VAT law, independently of any national civil-law provisions that may apply to the assignment of receivables (see CJEU judgment of 9 February 2023, C 482/21).

Furthermore, the right to adjust the taxable amount must be regarded as intrinsically linked to the VAT liability borne by the taxable person in its capacity as the person liable for VAT, as well as to its right to claim a refund of VAT duly paid.

In those circumstances, an assignment of receivables cannot result in the transfer of the creditor's obligation – as the person registered for VAT at the time of the supply – to pay the VAT due on that transaction, nor can it transfer the creditor's right to adjust the taxable amount retrospectively in order to obtain full or partial relief from that VAT liability (see CJEU judgment of 15 October 2020, C 335/19). Accordingly, in circumstances such as those of the main proceedings, the right to reduce the taxable amount pursuant to Article 90(1) of the VAT Directive cannot be exercised by the subcontractor acquiring the receivable, as it is not the taxable person in respect of the second transaction.

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Please Note:

As a key takeaway from the CJEU decision, it should be noted that the civil-law agreement between the parties – under which Mokoryte's claim against the main contractor (Modern Bau) was reduced to "zero" – ultimately proved disadvantageous. For the construction services provided, Mokoryte effectively received only EUR 50,000 (gross), although the original contractual value amounted to approximately EUR 400,000, including around EUR 70,000 Romanian VAT at a rate of 21%.

From a VAT perspective, it would have been advisable to assess the assigned receivable as lacking economic value. Otherwise, the assignment of the claim against the developer may be regarded as (part of) the agreed consideration for the construction services, beyond the EUR 50,000 cash payment.

In practice, more common scenarios involve suppliers assigning receivables against customers. The amount and scope of the consideration are determined exclusively by the legal relationship between the parties to the supply. Agreements to which the customer is not a party do not alter this relationship.

Accordingly, where a supplier assigns a receivable arising from a taxable transaction to a third party at a price below its nominal value without involving the customer, such assignment and sale are irrelevant for determining the taxable amount under Section 10(1) sentence 2 of the German VAT Act. This ensures consistency between the amount subject to VAT at the level of the supplier and the consideration paid by the customer.

This principle is confirmed by BFH case law (judgment of 6 May 2010 – V R 15/09): in that case, a taxable person operating a fitness studio and accounting for VAT on a cash basis assigned receivables from defaulting customers to a debt collection agency for 25% of their nominal value, transferring the risk of default. The BFH held that such assignments do not lead to a reduction of the taxable amount. Instead, the consideration is determined by the payments made by the customers to the assignee.

Any loss suffered by the assignee (e.g. the collection agency) is only relevant in the context of irrecoverable receivables under Section 17(2) no. 1 of the German VAT Act. The burden of proof lies with the original creditor (see Section 17.1(6) of the German VAT Application Decree).

Consequently, where a taxable person sells its receivables, it is advisable to contractually secure a right to obtain information from the assignee regarding the amounts actually collected from the customer, in order to ensure proper VAT treatment and any potential adjustment of the taxable amount.

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04 I Intra-Community Supply: Protection of Legitimate Expectations Even Without Return of a Confirmation of Arrival

BFH, judgment of 18 December 2025 – V R 3/25

The BFH had to determine the requirements for the protection of legitimate expectations under Section 6a(4) sentence 1 of the German VAT Act and, in particular, which conditions must be met in so-called "collection cases" (Abholfälle) in order for the supplier to be entitled to rely on the VAT exemption.

Facts of the case

In 2018 (the year at issue), the claimant (a tax advisor) offered a passenger vehicle for sale on an online platform. After the managing director (A) of a company (G) established in Romania expressed interest in purchasing the vehicle, the claimant verified the VAT identification number of G with the German Federal Central Tax Office, which issued a qualified confirmation. In addition, the claimant requested an extract from the commercial register of G, showing that A was authorized to represent the company as managing director.

The vehicle was collected from the claimant in July 2018, during which the purchase price was paid in cash. At the time of collection, the person collecting the vehicle identified himself as A by means of a photo ID, of which the claimant made a copy of the front side.

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Under the written purchase agreement, the purchaser undertook, inter alia, to transport the vehicle to Romania and to deregister it in Germany. The confirmation of arrival (Gelangensbestätigung) provided by the claimant to the purchaser was not returned to the claimant, despite several follow-up requests by telephone and in writing.

In his annual VAT return for the year at issue, which was initially subject to a reservation of review, the claimant treated the sale of the vehicle as a VAT-exempt supply. Following an enquiry by the Romanian tax authorities, which revealed that G had not declared an intra-Community acquisition of the vehicle, the German tax office took the view that the supply did not qualify as exempt under Section 4 no. 1(b) in conjunction with Section 6a of the German VAT Act. The tax authorities argued that the exemption requirements were not met, in particular due to the absence of a confirmation of arrival and uncertainty as to whether the person collecting the vehicle was indeed A. Moreover, the vehicle had not been registered in Romania but had instead – after deregistration – been re-registered in Germany.

As a consequence, the tax office issued an amended VAT assessment for the year at issue pursuant to Section 164(2) of the German Fiscal Code. The claimant's objection and subsequent appeal were unsuccessful.

Grounds of the decision

The BFH overturned the decision of the lower Fiscal Court. As the requirements for granting protection of legitimate expectations pursuant to Section 6a(4) of the German VAT Act were met in the present case, the action was to be upheld.

Where a taxable person has treated a supply as VAT-exempt, although the substantive requirements for an intra-Community supply under Section 6a(1) sentence 1 of the German VAT Act are not fulfilled, the supply must nevertheless be regarded as exempt pursuant to Section 6a(4) sentence 1 of the German VAT Act if the application of the exemption is based on incorrect information provided by the customer and the taxable person could not have identified the inaccuracy of that information even by exercising the diligence of a prudent businessperson.

Where the granting of protection of legitimate expectations requires that the taxable person holds evidence which, prima facie, supports the VAT exemption of the intra-Community supply, the taxable person must be in possession of documentary evidence establishing such prima facie proof. However, from an EU law perspective, this does not necessarily require a confirmation of arrival (Gelangensbestätigung).

Since the amendment of Section 17a of the German VAT Implementing Regulation (effective as from 1 October 2013), the confirmation of arrival constitutes only one possible form of evidence. The taxable person may provide documentary proof by any admissible means (cf. BR-Drucks 66/13).

Accordingly, the existence of a confirmation of arrival is not a prerequisite for the application of the protection of legitimate expectations under Section 6a(4) of the German VAT Act.

Pursuant to Section 13(1) no. 8 of the German VAT Act, VAT becomes chargeable at the time the supply is carried out in cases falling under Section 6a(4). At that point in time, it must already be possible to determine whether protection of legitimate expectations applies. A confirmation of arrival, if accurately completed, can only be obtained after the completion of transport. Requiring such confirmation as a mandatory condition would therefore prevent a legally certain assessment at the time of supply and would infringe the principle of legal certainty (see CJEU judgments Teleos, C 409/04, and Mecsek-Gabona, C 273/11).

In the present case, the claimant complied – in terms of their nature – with the evidentiary requirements applicable in the year at issue for the purposes of Section 6a(4) sentence 1 of the German VAT Act, in conjunction with Sections 6a(3) of the German VAT Act and Sections 17a et seq. of the German VAT Implementing Regulation. In particular, the absence of a confirmation of arrival within the meaning of Section 17a(2) no. 2 of the German VAT Implementing Regulation does not preclude the granting of protection.

Rather, in line with the version of Section 17a(2) of the German VAT Implementing Regulation applicable until 31 December 2011, the purchaser's declaration

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contained in the purchase agreement confirming that the vehicle would be transported to Romania was, in the present case, sufficient. The place of destination could be inferred from both the purchaser's invoice address and the purchase agreement (see BFH judgment of 17 February 2011 – V R 28/10).

As there was no dispute between the parties that the claimant had fulfilled the remaining evidentiary requirements – in particular the record-keeping obligations within the meaning of Section 17c of the German VAT Implementing Regulation – the Court refrained from further elaboration in this regard.

Furthermore, the claimant could not, even when exercising the diligence of a prudent businessperson, have identified the inaccuracy of the information provided by the customer G, assuming that the obligation to transport the vehicle to another Member State – undertaken by G – ultimately proved not to have been fulfilled.

Although the Fiscal Court had denied the VAT exemption under Section 6a(4) sentence 1 of the German VAT Act solely on the basis of insufficient documentary evidence, it failed to assess – as required for the application of that provision – whether the claimant had exercised the diligence of a prudent businessperson in light of the specific circumstances of the case.

While the BFH is, in principle, precluded from reassessing established facts, this does not apply where the lower court has established all facts necessary for the assessment and those findings, based on logical reasoning and general experience, support a particular conclusion that the court has not drawn (see, for example, BFH judgment of 5 November 2013 – VIII R 20/11).

On that basis, the BFH concluded that the claimant had exercised the required level of diligence. According to the findings of the Fiscal Court, the claimant had verified the VAT identification number of G with the Federal Central Tax Office (BZSt), which issued a qualified confirmation dated one day prior to the sale. In addition, the claimant verified the name, address and authority to represent the company of the purported representative (A) of the purchaser (G) and provided corresponding documentary evidence. The claimant also requested an extract from G's commercial register. At the time of collection, the individual collecting the vehicle identified himself by means of a photo ID, of which the claimant retained a copy of the front side, and matched this individual with A, the managing director named in the commercial register. Furthermore, G undertook in the purchase agreement to deregister the vehicle and transport it to Romania.

The BFH held that no further measures could reasonably have been expected from the claimant in order to exclude involvement in VAT fraud, even taking into account that the claimant is a tax advisor and that the transaction involved the collection of a high-value asset by a previously unknown customer. In particular, the tax authorities could not successfully argue that, due to the absence of a copy of the reverse side of A's identity document, it could not be verified whether A had personally signed the purchase agreement. Such a requirement would impose excessive standards of diligence, especially given that even noticeable discrepancies in signatures are not sufficient to undermine the evidential value of signed documents (see BFH decision of 9 September 2015 – V B 166/14).

Rather, in the circumstances of the case, it was sufficient that the claimant compared the photograph on the identity document with the individual present and concluded that the person in question was indeed A, the managing director of G.

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Please note:

This decision strengthens the principle of protection of legitimate expectations in the context of intra-Community supplies. A confirmation of arrival (Gelangensbestätigung) is not a mandatory requirement for protection under Section 6a(4) of the German VAT Act. What is decisive is that, at the time of the supply, the taxable person possesses coherent and plausible documentary evidence and observes the diligence expected of a prudent businessperson.

With this judgment, the BFH effectively restores practical relevance to the purchaser's declaration (Abnehmerversicherung), which had been formally abolished at the end of 2011. If the supplier is unable to obtain a confirmation of arrival, acting with due diligence requires securing documented confirmation from the customer that the goods will be transported to another Member State and, in addition, obtaining the customer's commitment to subsequently provide the confirmation of arrival, even though no formal evidentiary requirement exists in this respect.

In collection scenarios (Abholfälle), it is therefore advisable that the supplier also obtains, where possible, a qualified VAT identification number confirmation, an extract from the commercial register, and documentation confirming both the authority to represent and the identity of the person collecting the goods, for instance by retaining a copy of an identity document.

Particular importance is attached, in light of the BFH judgment, to a written purchaser's declaration confirming the transport or dispatch of the goods to another Member State (in cases where the customer arranges the transport) and an agreement on the subsequent submission of the confirmation of arrival. Against this background, it is advisable in practice to standardize documentation processes for intra-Community supplies – especially in collection scenarios – by implementing checklists and sample purchaser's declarations, ideally also in the customer's native language. Such measures significantly increase the likelihood of successfully invoking protection of legitimate expectations under Section 6a(4) of the German VAT Act in the event of a dispute.

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05 I Input VAT Deduction on Advance Payments Where the Supply Is Not Ultimately Performed

BFH, judgment of 4 December 2025 – V R 38/23

In the present case, the BFH had to determine under which conditions an advance payment invoice entitling the recipient to input VAT deduction exists and whether such deduction can be retained where the underlying supply is ultimately not carried out.

Facts of the case

In 2010/2011, the claimant invested in a photovoltaic (PV) system model. G GmbH & Co. KG (G) was to supply the claimant with a PV system, which the claimant intended to lease to C AG (C). On 22 December 2010, G issued two invoices in the amount of EUR 30,000 each plus EUR 5,700 VAT (invoice no. 255 referring to "advance payment" (Vorkasse) and invoice no. 256 without such reference). Only invoice no. 255 contained the explicit indication "advance payment". Both invoices referred to the general terms and conditions and stated that "the invoice date corresponds to the month of supply".

Invoice no. 255 was paid on 12 January 2011; a delivery note dated 19 January 2011 confirmed a direct delivery to C. Invoice no. 256 was paid at an unspecified date in December 2011.

However, the PV system was never actually installed. Instead, the arrangement formed part of

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a fraudulent Ponzi scheme, the initiators of which were later convicted of organized and commercial fraud.

Following an unsuccessful objection procedure, the Fiscal Court partially upheld the claim. While it denied input VAT deduction on the basis that the PV system had not been delivered, it granted input VAT deduction with respect to invoice no. 255 pursuant to Section 15(1) no. 1 sentence 3 of the German VAT Act, since the claimant had made an advance payment and received a proper advance payment invoice. By contrast, it denied input VAT deduction for invoice no. 256, as it was not identifiable as an advance payment invoice.

Grounds of the decision

The BFH did not follow the Fiscal Court's reasoning with regard to invoice no. 255 and set aside the decision in this respect.

The Court first clarified that, pursuant to Section 15(1) no. 1 sentence 3 of the German VAT Act, input VAT relating to payments made prior to the execution of a supply may already be deducted provided that an invoice has been issued and the payment has been made. However, this does not apply where advance or prepayments relate to supplies that are not sufficiently specified at the time of payment or where the performance of the supply is uncertain at that point in time.

Furthermore, input VAT deduction must be denied if it is established, on the basis of objective factors, that at the time of payment the recipient knew or should reasonably have known that the supply of goods or services would, in all likelihood, not be carried out.

With regard to invoice no. 255, the BFH confirmed the Fiscal Court's assessment that the payment was made by bank transfer with value date 12 January 2011, as evidenced by the submitted bank statement. From the claimant's perspective, the performance of the supply was not uncertain at that time. The essential elements of the future supply of the PV system, in particular the object of the supply, the purchase price and the delivery date, were sufficiently specified in invoice no. 255; only the place of delivery had not yet been determined.

However, the BFH held that the Fiscal Court erred in concluding that invoice no. 256 did not give rise to a right to deduct input VAT solely because it did not include the indication "advance payment". An invoice may qualify as an advance payment invoice entitling the recipient to deduct input VAT even in the absence of such an explicit reference, provided that it is otherwise apparent that the invoice relates to a supply that is yet to be performed.

At the same time, the BFH found that the Fiscal Court had failed to establish sufficient facts as to the exact timing of the payment made in December 2011 and whether, at that point in time, the performance of the supply was still sufficiently certain from the claimant's perspective. In this respect, doubts arise in light of the correspondence exchanged in November 2011. If the claimant lacked the necessary confidence in the performance of the supply at the time of payment, protection of legitimate expectations with respect to input VAT deduction would be excluded.

Furthermore, if the claimant assumed that the PV system had already been delivered to C and that the outstanding payment merely served to complete its participation in the investment model – which appears plausible in view of the delivery note dated January 2011 and the lease payments received from February 2011 onwards – the payment would have been made, from the claimant's perspective, for an allegedly completed supply. In such a case, the absence of an actual delivery would preclude input VAT deduction based on an advance payment. Entitlement to input VAT deduction on advance payments requires that, at the time of payment, the recipient considers the payment to relate to a supply to be performed in the future.

In its overall assessment, the Fiscal Court will have to attach particular importance to the fact that the claimant had already claimed input VAT deduction from invoice no. 256 in July 2011 for the VAT prepayment period of January 2011, even though no payment had yet been made in respect of that invoice. This behaviour suggests that, as early as July 2011, the claimant assumed that the supply had already been carried out in January 2011. Such an understanding is not consistent with the later assertion that a genuine advance payment was made in December 2011.

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Please note:

The BFH judgment addresses a scenario in which a taxable person makes a payment for a supply that is merely simulated and, in fact, never performed. Where the taxable person neither knew nor could have known that it was dealing with a fraudulent counterparty – which will generally be the case – the right to deduct input VAT from an advance or prepayment invoice remains intact.

The situation may differ, however, where the taxable person assumes, at the time of payment, that the supply has already been carried out. In such cases, the right to deduct input VAT may fail ab initio due to the absence of an actual supply, although the taxable person may in certain circumstances rely on good faith regarding the completion of the supply.

In cases involving advance invoices where the recipient initially does not make payment, the question arises whether a subsequent payment can give rise to input VAT deduction under the advance payment rules where the recipient assumes that the supply has already been performed in the meantime. In such circumstances, the payment is made, from the recipient's perspective, for a supply already received. If, in reality, the supply has not been performed, but merely simulated, this may preclude input VAT deduction (see Wäger, DStR 2026, 917).

An advance payment invoice does not need to be explicitly labelled as "advance payment" or "prepayment". What is decisive is that it is apparent from the invoice and the surrounding circumstances that it relates to a supply that has not yet been carried out. However, the timing of the payment and the expectation of the taxable person are of particular importance, as input VAT deduction on advance payments for supplies that are ultimately not performed requires that, at the time of payment, the taxable person genuinely expects the future performance of the supply and that such performance is not objectively uncertain.

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06 I Full Interest Charges on VAT and EU Law

BFH, judgment of 11 December 2025 – V R 7/24

The issue in dispute was whether late-payment interest under Section 233a of the German Fiscal Code (AO) on VAT is compatible with EU law, in particular the VAT Directive and the Charter of Fundamental Rights of the European Union (Charter).

Facts of the case

The claimant carries out its own economic activities and acts as the controlling company (Organträger) of several controlled entities (Organgesellschaften). Following a tax audit initiated in 2012, the tax office issued, in August 2019, an amended VAT assessment for the year 2007. This resulted in a difference amount within the meaning of Section 233a(3) AO of approximately EUR 3.7 million to the detriment of the claimant.

The difference amount included approximately EUR 1.9 million arising from the fact that the claimant had recorded VAT amounts relating to other EU Member States in its accounting as domestic input VAT and had claimed them in its VAT return, which was initially subject to a reservation of review. This treatment was corrected in the amended assessment.

Alongside the tax assessment, the tax office also assessed interest on additional VAT payable. This interest was subsequently reduced to approximately

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EUR 2.2 million. For reasons of equity, the tax office partially remitted the interest, namely in the amount of EUR 379,179.84 due to a voluntary payment made by the claimant in February 2017 towards the expected additional tax liabilities, and in the amount of EUR 26,925 on other grounds. The claimant's objection and subsequent action against the tax assessment were unsuccessful.

The claimant argued that the interest imposed was contrary to EU law, in particular Article 273 of the VAT Directive, Articles 51 and 52 of the Charter, as well as the principles of neutrality, equivalence and effectiveness. In its view, Section 233a AO constituted either a sanction under EU law or a measure intended to ensure the correct collection of tax. The BFH upheld the position of the tax authorities and the Fiscal Court.

Grounds of the decision

The BFH held that the full interest regime on VAT pursuant to Section 233a of the German Fiscal Code does not infringe EU law. The provision neither constitutes an implementation of EU law within the meaning of Article 51(1) sentence 1 of the Charter nor does it otherwise fall within the scope of EU law. Within the framework of the procedural autonomy afforded to Member States, Section 233a AO is, moreover, consistent with the principles of equivalence and effectiveness and – even assuming that EU law were applicable – also complies with the EU law principle of proportionality, taking into account the relevant regulatory objectives.

Section 233a AO is not subject to review under the proportionality principle set out in Article 52(1) sentence 2 of the Charter. The provision does not implement EU law within the meaning of Article 51(1) sentence 1 of the Charter, nor does it otherwise fall within the scope of EU law.

On a substantive level, Section 233a AO is not based on any of the relevant provisions of EU law. The interest on additional tax payments as well as on tax refunds applies equally to the benefit and detriment of taxpayers. It constitutes a mechanism – not provided for in EU law – designed to achieve a balance between taxpayers who are assessed for tax at different points in time (see Federal Constitutional Court, decision of 8 July 2021 – 1 BvR 2237/14; 1 BvR 2422/17).

Furthermore, Section 233a AO does not otherwise serve to implement EU law. The objective of the interest regime is not to ensure VAT neutrality. The full interest mechanism does not hinder the exercise of input VAT deduction; rather, it applies in a neutral manner both to the detriment of taxpayers who have claimed input VAT prematurely (for example, prior to receipt of an invoice) and to their benefit in cases where input VAT is claimed at a later stage despite the conditions for deduction already having been met.

A cross-border overall assessment is not required. For the purposes of ensuring VAT neutrality, it must be examined whether a single public authority has infringed the principle of equal treatment.

Moreover, the interest mechanism under Section 233a AO does not exhibit a sufficiently close connection with the fundamental structure of the VAT system. While interest is calculated, pursuant to Section 233a(1) sentence 1 AO, on the basis of the difference amount resulting from the tax assessment, it is not proportionate to the price received by the taxable person as consideration for specific supplies of goods or services. In addition, interest is not levied at each stage of production and distribution, including the retail stage, but is generally only charged 15 months after the end of the calendar year in which the tax arose and continues until the tax assessment becomes effective (Section 233a(2) AO). Nor is the interest offset against VAT already accounted for at previous stages of the production and distribution chain.

Finally, the imposition of default interest pursuant to Section 233a AO does not affect the VAT own resources of the European Union, but at most has an indirect influence on the determination of the corresponding "fictive" tax base. VAT own resources do not represent a share of actual national VAT revenue; rather, they are based on a value that is independent of the interest charged under Section 233a AO and therefore does not include such interest.

The principle of equivalence is satisfied by the fact that Section 233a AO applies equally to harmonised taxes such as VAT and to non-harmonised taxes, such as income tax or corporate income tax.

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Furthermore, it is irrelevant that the national legislature has limited the application of Section 233a AO to certain types of taxes. There are no objections to restricting its scope to taxes for which delays in assessment – and thus situations giving rise to interest – occur typically.

The principle of effectiveness – according to which the exercise of rights conferred by EU law must not be rendered practically impossible or excessively difficult – is likewise satisfied. Where a subsequent tax assessment gives rise to an additional charge triggering interest under Section 233a AO, it must generally be assumed that such assessment complies with EU law. Should this not be the case, it remains open to the taxable person to challenge the assessment by way of the legal remedies provided under the German Fiscal Code and the Fiscal Court Code, which themselves comply with the principle of effectiveness without requiring further elaboration.

If, in the course of such proceedings, a breach of EU law is established, the underlying tax assessment must be amended, with the consequence that the obligation to pay interest is eliminated. Conversely, if the assessment giving rise to the interest obligation is upheld because no breach of EU law is found, there is no EU law right the exercise of which is rendered impossible or excessively difficult.

Even if Section 233a AO were to be regarded as a measure implementing EU law, the BFH held that there would be no infringement of the EU law principle of proportionality. The interest regime is based on a general, standardised system that applies uniformly to all taxpayers according to clear and predictable rules.

The level of interest – both the previous rate of 0.5% per month (Section 238(1) AO) and the reduced rate of 0.15% per month applicable since 2019 (Section 238(1a) AO) – is not manifestly excessive from an EU law perspective. In this context, the BFH referred to the case law of the CJEU, which has accepted, in certain circumstances, relatively high flat-rate penalties (for example, 20% of the VAT due), provided that they are not disproportionate to the seriousness of the infringement (see CJEU, judgment of 30 April 2026 – C 544/24 – discussed in this newsletter).

Finally, cases of particular hardship may be addressed through a remission on equitable grounds pursuant to Section 227 AO. Such a separate procedure is subject to judicial review.

Please note:

In this comprehensive decision, the BFH has confirmed that interest on additional VAT payments levied pursuant to Section 233a of the German Fiscal Code is compatible with EU law. None of the arguments put forward by the claimant – including those based on the Charter of Fundamental Rights of the European Union, Article 273 of the VAT Directive, and the principles of neutrality, equivalence and effectiveness – were considered persuasive by the Court. Accordingly, they do not provide a basis for challenging the full interest regime as such.

As a consequence, disputes concerning the level or appropriateness of such interest remain a matter of national law (in particular the German Constitution, as well as Sections 233a and 238 AO) and, where applicable, may only be addressed within the framework of discretionary relief on equitable grounds.

In parallel to its decision in case V R 7/24 on the compatibility of the full interest regime with EU law, the BFH also ruled, in its judgment of 11 December 2025 – V R 8/24, on whether interest on additional tax payments pursuant to Section 233a AO should be remitted on equitable grounds in cases where a taxable person has incorrectly treated foreign VAT as domestic input VAT and is subsequently unable to obtain relief either in Germany or abroad. The BFH rejected such relief, providing detailed reasoning.

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07 I Import VAT Deductible as Input VAT Despite Immediate Re-export of the Goods

Munich Fiscal Court, judgment of 9 December 2025 – 5 K 808/23

Facts of the case

The claimant is a German limited liability company (GmbH) engaged in wholesale trading (import and export) of goods and accessories of all kinds. A Swiss company, E AG, intended to supply tobacco products to the claimant into Germany. The transport was carried out by F AG. This company submitted the customs declaration, naming the claimant as the "declarant" of the shipment, paid the import VAT in accordance with the tax assessment notice dated 23 April 2020, and invoiced the import VAT to the claimant on 29 April 2020.

The Swiss supplier applied the Incoterms clause "EXW"® (Ex Works). According to the information provided by the claimant and the export declaration issued by the customs office G in Switzerland, the goods were already returned to Switzerland on 24 April 2020 – due to the fact that the legal basis for the sale of this type of tobacco in Germany had ceased to apply – to the warehouse of F AG, before being stored with the logistics provider in Germany. Based on the available export declaration and the corresponding arrival notification in Switzerland, Germany was indicated as the country of export.

The claimant subsequently claimed the input VAT deduction for the import VAT paid, which was denied by the tax authorities.

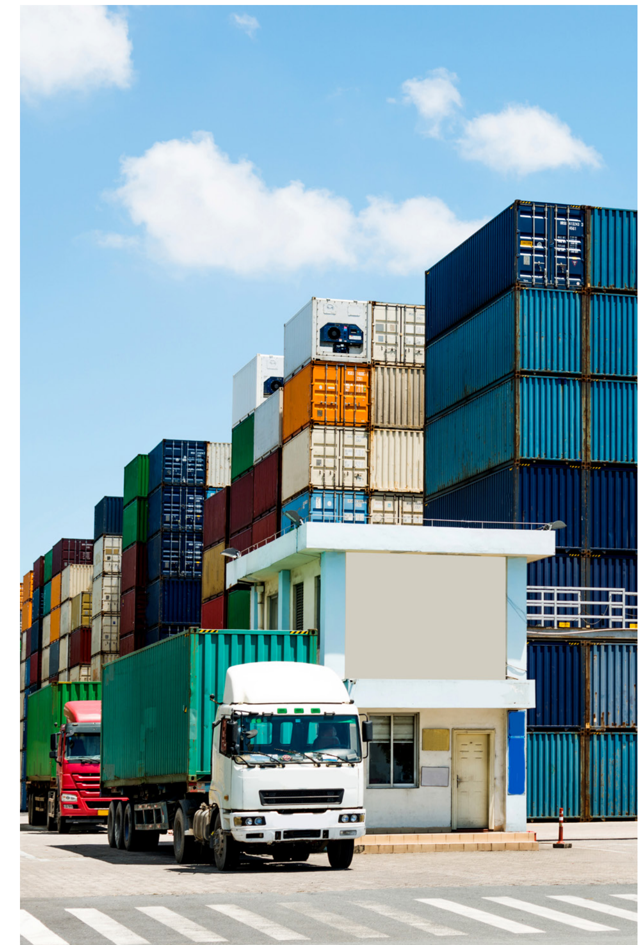
Following the initiation of legal proceedings, the claimant provided the court with a detailed description of the movement of goods:

"16 April 2020: Goods in storage at E AG, …/Switzerland, prepared for transport for delivery to F AG warehouse, at the disposal of the claimant.

22 April 2020: Collection of the goods by F AG for transport to … from …/Switzerland, NCTS No. …, transit document MRN: ….

22 April 2020: During transport to the claimant, the claimant and E AG agreed – following an article just published in a freight forwarding journal – to return the goods to Switzerland upon arrival in Germany, as a sales ban was expected after the expiry of transitional periods.

23 April 2020: Customs declaration submitted by F AG at the customs office …/Germany. The goods were cleared for free circulation in the EU for the claimant; the goods remained on the truck in …/Germany.



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23 April 2020: Return transport of the goods to Switzerland following the issuance of transit documents (NCTS No. …).

24 April 2020: Arrival of the goods with the same vehicle (registration number: …) at the premises of E AG, …/Switzerland."

Grounds of the decision

The Fiscal Court held that the claimant was entitled to deduct the import VAT paid in the year at issue. The goods in question had been imported into Germany and the claimant had obtained the power to dispose of them.

Pursuant to Section 15(1) sentence 1 no. 2 of the German VAT Act, a taxable person may deduct import VAT incurred on goods that have been imported into the country for the purposes of its business within the meaning of Section 1(1) no. 4 of the German VAT Act. Under EU law, this provision is based on Article 168(e) of the VAT Directive. In the present case, import VAT had arisen and the claimant was the person liable for such import VAT.

F AG had physically transported the goods from Switzerland into Germany; the goods were located in Germany, at the latest, on 23 April 2020 and were released for free circulation on that date. This follows from the claimant's credible description of the movement of goods as well as from the fact that the goods were cleared by customs at the customs office A on 23 April 2020, import VAT was assessed and subsequently paid. In the absence of any breaches of obligations, there is no requirement for the goods to have entered the economic circulation.

In this case, the particular feature was that the customs procedure applied was procedure code "4010", which relates to the re-importation of returned goods into the European Union. However, this circumstance is irrelevant for the requirement to levy import VAT.

The claimant was also the party liable for the import VAT. Pursuant to Section 13a(2) of the German VAT Act in conjunction with Section 21(2) of the German VAT Act, the provisions relating to customs duties apply mutatis mutandis. Under Article 77(1)(a) and (3) of the Union Customs Code, in the case of release for free circulation, the person liable for customs duties is the declarant. In the present case, F AG submitted the declaration in the name of the claimant. Accordingly, the main customs office assessed the import VAT against the claimant by notice dated 23 April 2020, which constitutes sufficient evidence in this regard (see BFH judgment of 21 January 2015 – XI R 12/14). In addition, F AG invoiced the import VAT to the claimant.

The claimant imported the goods for the purposes of its business because it had the power to dispose of them at the time of importation. In accordance with a directive-compliant interpretation of Section 15(1) sentence 1 no. 2 of the German VAT Act, the importation for business purposes requires that the imported goods are used for the purposes of the taxable person's taxable transactions. This presupposes that the taxable person uses the goods itself and that their value is incorporated into the cost components of its economic activity. The established case law of the BFH that the taxable person must have the power to dispose of the imported goods does not imply a different conclusion (see BFH judgment of 20 July 2023 – V R 13/21).

The transfer of goods within the meaning of Section 3(1) of the German VAT Act consists of supplies by which a taxable person, or a third party acting on its behalf, enables the recipient or a third party acting on the recipient's behalf to dispose of goods in its own name (i.e. the transfer of the power to dispose). This provision implements Article 14(1) of the VAT Directive into national law, according to which a supply of goods is to be understood as the "transfer of the right to dispose of tangible property as owner".

The concept of a "supply of goods" within the meaning of Article 14(1) of the VAT Directive encompasses any transfer of a tangible asset by one party which empowers the other party to dispose of that asset as if it were the owner, irrespective of whether ownership is transferred in accordance with the formal requirements laid down by the applicable national law.

According to the Incoterms clause "Ex Works"® used by E AG for the delivery, the claimant bore the full risk and all costs associated with the transport of the goods, as well as the responsibility for their transport, from the moment the goods were made available for pickup; the seller's obligation was limited to making the goods available at its premises or warehouse. Based on this, and taking into account that F AG acted on behalf of the claimant when submitting the customs declaration, the Court

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concluded that F AG transported the goods on behalf of the claimant. Consequently, the claimant obtained the power to dispose of the goods at the commencement of the transport.

In light of the above, contrary to the view of the tax authorities, the case at hand does not constitute a "refusal of acceptance" of the goods by the claimant, which could have triggered the legal consequences set out in Section 15.8(11) of the German VAT Application Decree and precluded the completion of the supply. Rather, the supply was completed at the time the power to dispose of the goods was transferred at the beginning of the transport.

The Court further considered the claimant's submission to be credible, namely that following the sudden emergence of an impending sales ban on the tobacco products at issue in Germany, it was necessary to act swiftly to dispose of the goods elsewhere. In this context, the parties had agreed orally to return the goods to Switzerland immediately after their import into Germany. This constituted a new contractual arrangement concerning the onward supply of the goods, the performance of which – namely the return transport – was an expression of the claimant's power to dispose of the goods.

Please note:

Pursuant to Section 15(1) sentence 1 no. 2 of the German VAT Act, input VAT deduction in respect of import VAT no longer depends – as it did in the past – on the actual payment of that tax, but merely on its accrual. However, the interpretation of this provision under German law remains controversial, as the requirement that the goods be "imported for the purposes of the business of the taxable person claiming the deduction" is often construed to mean that the taxable person must have obtained the power to dispose of the goods at the time of import, with the right to deduct input VAT being made contingent upon this condition.

In its established case law, the BFH has consistently held that input VAT deduction on import VAT depends on whether the taxable person holds the power to dispose of the imported goods. In light of the case law of the CJEU (judgment of 8 October 2020 – C 621/19), the BFH has further refined its position by clarifying that an import is considered to be made for the purposes of the taxable person's business where the import VAT is reflected in the price of the output transactions or in the cost components of the goods and services supplied by the taxable person as part of its economic activity (see BFH judgment of 20 July 2023 – V R 13/21).

In the present case, the Fiscal Court did not address the position of the German Federal Ministry of Finance (BMF) (BMF letter of 16 July 2020, DStR 2020, 1624), according to which the delivery terms (Incoterms®) are irrelevant for determining who has the power to dispose of the goods at the time of their release for free circulation. Contrary to the view taken by the Fiscal Court, the administrative position set out in Section 15.8(4) sentence 5 of the German VAT Application Decree provides that the agreed delivery terms are not decisive.

Accordingly, where a German taxable person purchases goods from a Swiss supplier under delivery terms such as "Delivery At Place – DAP"®, the risks associated with the goods may only transfer to the German recipient upon unloading at the place of delivery within Germany. However, for VAT purposes, the goods are deemed to have been supplied to the German taxable person already at the commencement of transport or dispatch in Switzerland (Section 3(6) of the German VAT Act). The recipient is therefore considered to have obtained the power to dispose of the goods already in Switzerland – and thus also at the time of release for free circulation.

It follows that it is not decisive who actually paid the import VAT or who physically transported the goods across the border (see Section 15.8(4) sentence 7 of the German VAT Application Decree).

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08 I Input VAT Deduction in Case of Change in Use in the Year of Acquisition

Berlin-Brandenburg Fiscal Court, judgment of 25 February 2026 – 7 K 7033/25

The case at hand addresses a fundamental issue concerning input VAT deduction under Section 15 of the German VAT Act. Specifically, the question was whether a change in the use of an asset within the year of acquisition must be taken into account solely by way of an adjustment pursuant to Section 15a of the German VAT Act, or whether it leads to a correction of the original input VAT deduction under Section 15 of the German VAT Act.

Facts of the case

In the years at issue, the claimant generated revenue from construction brokerage services, construction activities, and vehicle rental. In 2017, the claimant purchased a passenger vehicle showing VAT separately and registered it in his own name. From the end of 2017, the claimant entered into rental agreements for that vehicle and, from 2018 onwards, also for additional vehicles.

Nevertheless, the tax authorities denied the claimant the right to deduct input VAT. Initially, the tax office took the view that input VAT deduction was excluded pursuant to Section 15(1a) of the German VAT Act in conjunction with Section 4(5) sentence 1 no. 4 of the German Income Tax Act (non-deductible representation expenses), and that an adjustment

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under Section 15a of the German VAT Act was not applicable. Following an unsuccessful objection, the claimant brought the matter before the Fiscal Court, which partially upheld the claim.

Grounds of the decision

The Fiscal Court first clarified that the formal requirements of Section 15(1) sentence 1 no. 1 of the German VAT Act were met and that the vehicle had been allocated to the claimant's business assets. The 10% threshold pursuant to Section 15(1) sentence 2 of the German VAT Act had been exceeded; a nearly exclusive private use was not plausible in light of the rental activities and the claimant's ownership of additional private vehicles. The rental agreements were to be recognized despite the objections raised by the tax authorities (in particular with regard to insurance arrangements, the absence of deposits, and the level of rental fees).

However, for the period from acquisition until the commencement of the rental activity, Section 15(1a) of the German VAT Act in conjunction with Section 4(5) sentence 1 no. 4 of the German Income Tax Act was applicable. The acquisition of a luxury sports car, which, inter alia, was used in races and typically serves representational or personal purposes, constituted an expense for "similar purposes" that is not deductible as a business expense. Through the mechanism of Section 15(1a) of the German VAT Act, the corresponding input VAT is permanently excluded from deduction to that extent. The claimant's initially intended use for advertising and representation purposes was not sufficient to satisfy the exception under Section 4(5) sentence 2 of the German Income Tax Act (i.e. where the object itself is intended to generate profits).

Only with the commencement of the rental activity in 2017 did a use for business purposes arise that is generally eligible for input VAT deduction. However, according to the court, this subsequent change in use does not lead to a retroactive correction of the original input VAT deduction under Section 15 of the German VAT Act, even if the change occurs within the year of acquisition. Instead, such a change in use must be taken into account exclusively through the adjustment mechanism provided for in Section 15a of the German VAT Act.

The court noted that this issue has not yet been decided by the highest courts and remains controversial in academic literature. It referred to differing views expressed in the literature, some of which advocate an opposing approach. For this reason, the court allowed the appeal on points of law pursuant to Section 115(2) no. 1 of the Fiscal Court Code, particularly as the question of how changes in the use of business assets within the year of acquisition – and after initial use – affect input VAT deduction (i.e. whether through an adjustment in the year of acquisition or exclusively via Section 15a of the German VAT Act) has not yet been clarified by the BFH.

Please note:

According to the view of the Berlin-Brandenburg Fiscal Court, a subsequent use of an asset for taxable business purposes that was initially subject to the input VAT exclusion under Section 15(1a) of the German VAT Act can only be taken into account through the adjustment mechanism provided for in Section 15a of the German VAT Act, even where the change in use occurs within the year of acquisition. The original exclusion of input VAT remains in place; the change in use merely results in prorated adjustment amounts over the relevant adjustment period.

By contrast, parts of the academic literature advocate a different approach. For example, Oelmaier (see Sölch/Ringleb, VAT Act, Section 15 para. 38, 42, 212) takes the view that a change in use within the year of acquisition may give rise to a retroactive correction of the original input VAT deduction. In this view, Section 15a of the German VAT Act would only apply where the circumstances relevant for input VAT deduction change in subsequent years following the year of acquisition (similarly Frye in Rau/Dürrwächter, VAT Act, Section 15a para. 77).

It therefore remains to be seen how the BFH will ultimately resolve this legal issue.

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09 I Distribution Chains for Multi-purpose Vouchers

BMF letter dated 29 April 2026, III C 2 – S 7100/00097/002/309

At first glance, the transfer and issuance of multi-purpose vouchers within a distribution chain may appear to constitute merely an exchange of means of payment. In substance, however, the intermediary is considered to provide a supply aimed at promoting sales at the time of transfer and issuance, acting both in the name of another party and in its own name. This type of supply is often described as an atypical "intermediation service". The BMF has now provided guidance on this form of intermediation service in its recent letter.

Where the supplying enterprise and the voucher issuer have not agreed on the level of remuneration for the intermediation service, the BMF stipulates that such remuneration is to be determined as the difference between the issue price of the voucher and the purchase price paid by the voucher issuer.

According to the BMF, these principles also apply in cases where the voucher issuer transfers multi-purpose vouchers in its own name and for its own account. The taxable base for the generally taxable supply to the entrepreneur issuing the voucher is likewise to be determined – in the absence of any contractual agreement on the remuneration for the service – as the difference between the issue price

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of the voucher and the purchase price paid by the voucher issuer.

Where multiple intermediaries are involved in a distribution chain in which multi-purpose vouchers are traded in their own name and for their own account, the BMF clarifies that, in the absence of an agreement on remuneration, the taxable amount for the supply of the intermediary to the voucher issuing or transferring entrepreneur is determined as the difference between the face value of the voucher and the purchase price paid by the intermediary.

The German VAT Application Decree has been amended accordingly and supplemented with an illustrative example. The principles set out in the BMF letter are to be applied in all open cases.

Please note:

Where no agreement exists between the supplier and the voucher issuer regarding the level of remuneration for the sales promotion service (so-called "intermediation service"), such remuneration is to be determined as the difference between the voucher issue price (i.e. the nominal value of the voucher) and the purchase price.

Where the supplier specifies a maximum resale price to be charged to the end customer, that price shall be decisive for determining the relevant taxable amount.

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10 I VAT Treatment of Travel Services Provided by Non-EU Established Businesses

BMF letter dated 28 April 2026, III C 2 – S 7419/00016/022/023

By its letter dated 29 January 2021, the German Federal Ministry of Finance (BMF) clarified that Section 25 of the German VAT Act (margin scheme for travel services) does not apply to travel services supplied by businesses established in third countries that do not have a fixed establishment within the European Union.

For reasons of protection of legitimate expectations, it was, however, accepted that the special scheme under Section 25 of the German VAT Act could still be applied to travel services supplied up to 31 December 2020 by businesses established outside the EU without a fixed establishment within the EU.

This non-objection rule has been extended several times, most recently until 31 December 2026.

The BMF has now prolonged this transitional rule for a further three years, until 31 December 2029.

Please also refer, in this context, to the judgment of the Lower Saxony Fiscal Court dated 13 November 2025 (5 K 42/25), currently pending before the BFH under case number V R 1/26 (see VAT Newsletter February 2026).

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Events

NEW – Our VAT News Talk

Rainer Weymüller, former presiding judge at the Munich Finance Court and Of Counsel at KPMG, and Dr. Oliver Buttenhauser, partner at KPMG, will take – after a successful start on 23 April 2026 – the topics covered in the newsletter "one step further" and discuss the implications for daily VAT practice with you.

Make an note of the following dates now:
September 17, 2026,
November 19, 2026 and
February 18, 2027
(each from 11:00 a.m. to 12:00 p.m.).

You can register directly here:
https://www.events.kpmg.de/vat-news-talk

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TaxNewsFlash Indirect Tax

KPMG articles on indirect taxes from around the world

You can find the following and other articles here.

28 May – Germany:
Determination of place of supply of marketing services (Federal Fiscal Court decision); other VAT developments

27 May – Africa:
Rules on collecting VAT on online and digital supplies in Rwanda; other tax developments

27 May – Germany:
New draft bill amending Tax Advisory Act; other tax developments

26 May – Bahrain:
Customs duties and 10% VAT to apply on shipments valued over BHD 100

26 May – Dominica:
Extended VAT exemption and import duty waivers on essential goods

26 May – Netherlands:
DAC8 enacted; qualification as joint venture under Pillar Two rules; other tax developments

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[1] Trade & Customs

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