

VAT News: Hot topics and issues in indirect taxation

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01 | Offsetting Model for Import VAT



On 10 September 2026, the Conference of Finance Ministers endorsed the introduction of an offsetting model for import VAT.

Under the proposed model, import VAT would in future be offset directly against the corresponding input VAT deduction. This would eliminate the need for businesses to pre-finance import VAT.

According to the German federal states, the initiative is aimed at reducing administrative burdens, easing liquidity constraints for importing businesses and strengthening Germany's position as a logistics hub. Comparable mechanisms are already in place in several other EU Member States.

At this stage, however, the proposal does not yet constitute a legislative amendment. Corresponding changes at federal level and the necessary technical preparations will first be required. Based on current plans, the model could be introduced with effect from 1 January 2030.

This development is likely to be of particular interest to businesses with significant import volumes.

02 | Planned Legislative Changes Relating to German Customs and Its Powers



With the “Draft Act for Greater Fairness by Strengthening the Customs Administration and Combating Financial Crime” (Bundesrat Printed Paper 446/26, Customs Crime Prevention Act – Zollkriminalitätsbekämpfungsgesetz, ZollKrimBG), the German Federal Government aims to modernise the customs administration in structural, staffing and technological terms and to realign the fight against organised crime, money laundering and undeclared work.

The key elements of the draft legislation include:

1. Organisational Reform of the Customs Administration (“Customs 2030”)

At both central authority level (General Customs Directorate) and local level, the customs administration is to be strictly divided into two areas of responsibility in future: “Customs and Taxes” and “Security and Enforcement”. The existing 41 principal customs offices and eight customs investigation offices are to be consolidated, creating 41 customs directorates as new local authorities. The Customs Criminal Investigation Office (Zollkriminalamt, ZKA) and the Central Office for Sanctions Enforcement (Zentralstelle für Sanktionsdurchsetzung, ZfS) are

to be fully integrated into the General Customs Directorate. The Financial Control of Undeclared Work unit (Finanzkontrolle Schwarzarbeit, FKS) will remain a separate organisational unit but will receive additional staff and budgetary resources as well as extended powers.

The Financial Intelligence Unit (FIU) is to remain an organisationally autonomous and professionally independent part of the General Customs Directorate.

2. Combating Money Laundering and Financial Crime

The existing Customs Investigation Service Act is to be renamed and its scope of responsibilities refocused on combating customs-related crime as a whole. A new administrative procedure is to be introduced for investigating and securing significant assets where there are reasonable doubts as to their lawful origin. As a general rule, this will apply to assets with a value of at least EUR 100,000 or EUR 50,000 in the case of assets subject to registration. If the persons concerned fail to dispel such doubts, the fiscal courts may order the confiscation of the assets.

Specialised units are to be established within the local customs directorates to prioritise complex cases of international money laundering. In addition to cash and equivalent means of payment, customs supervision is to be explicitly extended to valuables such as high-value watches, jewellery and works of art.

3. Digital Modernisation and Extended Investigative Powers

Subject to constitutional limitations, customs authorities are to be permitted to use modern applications for automated data analysis in order to identify complex criminal and financial structures.

Furthermore, a legal basis is to be established for the use of mobile sensor platforms, such as drones, for law-enforcement and asset-securing purposes, as well as for biometric matching using publicly accessible internet data.

The German Money Laundering Act is also to be amended with a view to improving the quality of data contained in the Transparency Register. In addition, “Coordinating Bodies” are to be established at both federal and state level to improve the coordination of money laundering supervision.

4. Transfer of Responsibilities of Local Authorities (Section 26 FVG)

Until 31 December 2027, the customs directorates will continue to be permitted to use the designations “principal customs office” and “customs investigation office” in legal and business transactions. Existing forms, official seals and signage may likewise continue to be used until that date. Administrative acts and other measures are to remain effective even if they are still issued under the former designation. Until 31 December 2027, appeals may be lodged either with the authority previously

responsible, for example the principal customs office, or with the customs directorate responsible as from 1 January 2027. Receipt by either authority will preserve the applicable deadline (Section 25(2) FVG, new version). Administrative acts, instructions on available legal remedies, notifications, procedural declarations and other measures of the customs directorates will remain effective even if, during the transitional period ending on 31 December 2027, they are still issued or notified under the previous designation “principal customs office” or “customs investigation office” (Section 29 FVG, new version).

The legislation is generally expected to enter into force on 1 January 2027.

03 | Planned Reform of the German Distance Learning Protection Act



The “Draft Act on the Modernisation and Reduction of Bureaucracy in Distance Learning” provides for the complete repeal of the German Distance Learning Protection Act (Fernunterrichtsschutzgesetz, FernUSG), including the notification and approval

procedures administered by the State Central Agency for Distance Learning (Staatliche Zentralstelle für Fernunterricht, ZFU). The draft provides for Sections 1 to 26 FernUSG to be repealed without replacement. As a result, the existing special civil-law provisions, including specific information, formal, withdrawal and termination requirements, as well as the regulatory approval requirement for distance-learning courses, would cease to apply.

The legislation, which dates back to 1977, is considered outdated and no longer suited to today’s digital education environment involving online platforms, streaming and e-learning services. In the legislator’s view, consumer protection for learners is now comprehensively and consistently ensured by the general consumer protection provisions of the German Civil Code (BGB), including withdrawal rights applicable to distance contracts and the rules governing general terms and conditions.

The Act is generally expected to enter into force on 1 July 2027. During a transitional period until the Act ceases to apply in full on 30 June 2028, an official certificate will replace the previous approval where other legislation requires evidence of approval under the FernUSG. Approvals already granted will continue to be deemed to constitute such certificates.

Please note:

As the approval requirement and approval procedure under Sections 12 et seq. FernUSG are to be abolished, official approvals under the FernUSG will, in principle, no longer be issued once the new legislation has entered into force. As a result, Section 4.21(2), sentence 4 of the German VAT Application Decree (UStAE), which provides that “courses and streaming services approved under the Distance Learning Protection Act qualify as educational services”, would effectively become obsolete.

The explanatory memorandum to the legislation emphasises that the transitional provision is intended to give legislators and regulators sufficient time to adapt existing cross-references to the new legal framework. Consequently, the German Ministry of Finance and/or the German tax authorities would need to amend Section 4.21 UStAE or establish new rules governing how qualifying educational services are to be distinguished and evidenced for VAT purposes in future, in the absence of ZFU approval.

04 | Margin Scheme Also Applies to Loss-Making Promotional Excursions

CJEU, Judgment of 10 September 2026 – Case C-565/24 – P-GmbH & Co. KG



The CJEU's judgment concerning so-called "Kaf-feefahrten" (promotional excursions involving sales events) is of considerable practical relevance to businesses that combine travel services with sales of goods. The proceedings concerned whether the special scheme for travel agents under Article 26 of the Sixth VAT Directive (now Article 306 of the VAT Directive) applies to excursions whose costs are only partly covered by a participation fee and are otherwise financed through sales of goods. The Court was also asked to determine whether a negative margin gives rise to a right to a refund of input VAT.

Facts of the Case

P-GmbH & Co. KG (P) organised coach excursions between 1997 and 1999 that included passenger transport, catering and a tourist programme. Participants paid a fee that did not fully cover the cost of the transportation services. The remaining share of the costs and other expenses was financed from revenue generated through sales of goods during the excursions; participants were not required to purchase any goods. For VAT purposes, the transactions constituted separate supplies: supplies of goods on the one hand and transportation or travel services on the other.

P initially treated the travel services under the general VAT rules and deducted in full the input VAT attributable to the transportation services purchased. Following tax audits and court proceedings, however, the Lower Saxony Fiscal Court held that the German margin scheme for travel services under Section 25 German VAT Act (UStG) applied to the excursions supplied for consideration and, to that extent, denied the input VAT deduction. The German Federal Fiscal Court (BFH) referred to the CJEU, inter alia, the questions whether Article 26 of the Sixth VAT Directive also applies where the travel service systematically generates a negative margin for the taxable person and whether such a negative margin may give rise to a refund of input VAT.

Grounds for the Decision

Article 26 of the Sixth VAT Directive is not limited to travel agents in the conventional sense. The decisive factor is whether a taxable person supplies travel services in its own name and, for that purpose, makes use of supplies of goods or services purchased from other taxable persons ("travel inputs").

In this respect, services supplied by travel agents and tour operators are generally characterised by the fact that they comprise multiple services, in particular transportation and accommodation services, which may be supplied partly abroad and partly in the Member State in which the travel agent has established its business or has a fixed establishment. Owing to the number of services and the places at which they are supplied, applying the general rules

governing the place of taxation, taxable amount and input VAT deduction would give rise to practical difficulties for such businesses that could hinder their activities. To adapt the applicable rules to the specific characteristics of this activity, the EU legislature therefore introduced a special VAT scheme.

In the present case, the order for reference indicated that the transactions at issue consisted of coach excursions exhibiting the characteristics of travel services. It was also established that the transportation services were purchased from other taxable persons and subsequently resold by P in its own name. Accordingly, the transactions at issue were comparable to transactions typically carried out by travel agents or tour operators and were, in principle, capable of falling within the special scheme for travel agents.

In light of the questions referred, however, it was necessary to determine whether this assessment was affected by the fact that the transactions systematically generated losses and that their costs were covered by P's separate activity involving sales of goods.

First, as regards the relationship between the transportation services at issue and the supplies of goods, the only relevant criterion for the application of the special scheme was whether the travel service, in this case the transportation service, constituted a principal or an ancillary supply.

Under certain circumstances, several formally distinct supplies that could be supplied separately and thus separately give rise to taxation or ex-

emption must be regarded as a single transaction where they are not independent. This applies, in particular, where one or more elements constitute the principal supply, while other elements constitute one or more ancillary supplies that share the VAT treatment of the principal supply. One relevant criterion is whether, from the perspective of the average consumer, the supply has an independent purpose. A supply is ancillary to a principal supply where it does not constitute an aim in itself for the customer, but rather a means of better enjoying the principal supply.

In the present case, the documents before the Court indicated that, from the perspective of a business such as P, organising the excursions undoubtedly served the purpose of encouraging participants to purchase the goods offered during the excursion. However, the purchase of goods was by no means mandatory. Participants could simply take part in the excursion without purchasing anything.

The coach excursion could therefore clearly constitute an aim in itself for customers rather than merely a means of benefiting, under optimal conditions, from the opportunity to purchase goods. Furthermore, according to the order for reference, the revenue generated from the travel services was not merely insignificant compared with the revenue from sales of goods, since the fee charged for the transportation service covered an average of 60% of the cost of that service.

Accordingly, travel services regularly offered by a business such as P to its customers for a specific

consideration could not be classified as merely ancillary supplies. The fact that the revenue from those services systematically resulted in a negative margin for the business, whose economic activity was intended to enable it to cover the remaining costs of those services through sales of goods during the excursions, did not affect that assessment. The relationship between those services and the supplies of goods therefore did not preclude application of the special scheme to the transactions at issue.

The inclusion within the special scheme of travel services that systematically generate a negative margin and are intended to encourage participants to purchase goods offered in connection with those excursions is a consequence of the conditions governing the application of that scheme.

The relevant provisions of the special scheme do not provide for a right to a refund of the VAT paid by P on transportation services purchased from taxable third parties. Moreover, P had freely chosen its business model in the knowledge that the travel services it offered were structurally loss-making.

Please Note:

For German businesses combining promotional excursions of this kind with sales of goods, the CJEU's judgment confirms that Article 306 of the VAT Directive and the corresponding provision in Section 25 UStG may apply even where travel services generate a negative margin. Where a transaction qualifies as a travel service, it is subject to the margin scheme as a single supply of services, provided that travel services are purchased in the business's own name and supplied for the direct benefit of the traveller. A negative margin does not give rise to a right to a refund of input VAT; rather, the deduction of input VAT incurred on travel services purchased for the direct benefit of the traveller remains excluded.

However, the CJEU judgment does not establish that every transaction involving a transportation service automatically constitutes a travel service within the meaning of Article 306 of the VAT

Directive, as there is no principle under VAT law whereby one supply automatically determines the VAT treatment of another. Rather, it must be assessed in each individual case whether the transportation service is merely ancillary to another principal supply or whether it constitutes an aim in itself, as the CJEU found in the case at hand.

That a different conclusion could have been reached in the underlying proceedings is illustrated by the Advocate General's Opinion of 27 November 2025, which took the view that the promotional excursions at issue did not constitute travel services falling within the special scheme.

05 | CJEU Strengthens the Defense Rights of Liable Managing Directors

CJEU, Judgment of 16 July 2025 – Case C-158/25 – QJ



The case concerned whether a national rule imposing joint and several liability on a company director for the company's tax debt falls within the scope of EU law even where that liability does not constitute a penalty. A further question concerned the role, in the context of such joint and several liability, of the requirement of effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union (Charter). Specifically, the question arose whether a director pursued in his capacity as a person jointly and severally liable must be entitled to challenge, by way of an incidental review, a tax assessment issued to the taxable company that had become final.

Facts of the Case

On 17 March 2018, the Luxembourg VAT administration (AEDT) issued two VAT assessments against VN, one for 2014 and the other for 2015 and 2016. VN's appeal against those assessments was dismissed as inadmissible because it had been lodged out of time. VN subsequently failed to pay VAT for the years 2014 to 2016.

From 22 April 2013 to 15 February 2019, the applicant in the main proceedings was responsible for VN's day-to-day management as its director. On 16 May 2019, the AEDT issued a liability assessment

against him and sought payment from him, as the director responsible for VN's day-to-day management from 2013 to 2019, of the VAT that had remained unpaid.

The director challenged the liability assessment, arguing in particular that he had to be able to challenge, by way of an incidental review, the tax assessment issued against VN and to raise any infringements of fundamental rights. The Luxembourg courts rejected that argument on the basis that the tax assessment issued to the company had become final. The Cour de cassation referred three questions to the CJEU concerning the applicability of Article 47 of the Charter and the scope of judicial protection.

Grounds for the Decision

The request for a preliminary ruling showed that the applicant was challenging the liability assessment before the referring court while alleging that the tax assessment addressed to the taxable company, for whose VAT debt he was being held liable, was unlawful.

Accordingly, the referring court's first question sought, in essence, to determine whether Articles 47 and 51(1), first sentence, of the Charter must be interpreted as meaning that the requirements arising from the right to an effective remedy enshrined in Article 47 of the Charter apply in an action brought by a company director held liable for payment against a liability assessment.

The scope of the Charter is defined in the first sentence of Article 51(1), under which its provisions are

addressed to the Member States only when they are implementing EU law. The fundamental rights guaranteed within the EU legal order therefore apply in all situations governed by EU law, but not outside such situations.

The concept of "implementing Union law" within the meaning of that provision requires a degree of connection between an act of EU law and the national measure at issue that goes beyond the matters concerned being closely related or one of those matters having an indirect impact on the other (see, to that effect, judgments of 6 March 2014, C-206/13, and 12 September 2024, C-709/22).

In determining whether a national measure concerns the "implementation of Union law", it is therefore necessary to examine, inter alia, whether the national rule at issue is intended to implement a provision of EU law, the nature of that rule and whether it pursues objectives other than those covered by EU law, even if it may indirectly affect EU law, and whether there is a rule of EU law that is specific to, or capable of affecting, the relevant field.

In the present case, the liability rule at issue appeared to be linked to a breach of statutory VAT obligations. Under that rule, the national tax administration could recover VAT owed by a legal person from members of its board of directors, its directors and any de jure or de facto manager responsible for the day-to-day management of that legal person. Article 67-3(1), second sentence, LTVA (Luxembourg VAT Act) provided in that regard that the liability assessment "entitles the administration to recover

from those persons the VAT owed by the persons liable for VAT".

Such a rule is intended to ensure the recovery of VAT that has not been paid by a taxable legal person. It contributes to compliance with each Member State's obligation to adopt all legislative and administrative measures appropriate for ensuring collection of all VAT due within its territory and, inter alia, to combat tax evasion in accordance with Article 325(1) TFEU and Article 273 of Directive 2006/112.

Accordingly, by introducing and applying that rule, the Grand Duchy of Luxembourg must be regarded as implementing EU law within the meaning of Article 51(1) of the Charter.

That conclusion was not called into question by the Luxembourg Government's argument disputing the applicability of the Charter on the ground that the liability rule was intended not to ensure collection of all VAT owed by a taxable company, but rather to compensate the national tax administration for damage caused by misconduct attributable to the director of that company.

As the Advocate General observed in point 45 of her Opinion, any national measure that contributes to the full or partial recovery, from a taxable person or a third party, of VAT not paid by a taxable person must be regarded as ensuring the correct collection of VAT and, where appropriate, combating tax evasion. The fact relied on by the Luxembourg Government that such a measure introduces a specific form of civil liability and does not form part of a sys-

tem of tax penalties under national law is irrelevant in that respect. In this context, the Court referred to a comparable case of joint and several liability decided in its judgment of 13 October 2022, C-1/21.

Moreover, as the Luxembourg Government acknowledged at the hearing, any damage to be compensated under the liability rule at issue corresponds exactly to the amount of VAT not paid by the taxable legal person.

Secondly, reliance on the right to an effective remedy laid down in Article 47 of the Charter in an individual case requires either that the person invoking that right relies on rights or freedoms guaranteed by EU law or that the person is subject to proceedings constituting an implementation of EU law within the meaning of Article 51(1) of the Charter.

In the present case, the applicant in the main proceedings challenged a liability assessment issued on the basis of the liability rule at issue, which constituted an implementation of EU law within the meaning of Article 51(1) of the Charter. Accordingly, the requirements of Article 47 of the Charter applied in such circumstances.

Articles 47 and 51(1), first sentence, of the Charter must therefore be interpreted as meaning that the requirements arising from the right to an effective remedy enshrined in Article 47 apply in an action brought by a company director held liable for payment against a liability assessment.

As regards the liability rule at issue, the documents before the Court showed that the tax liability of the

person held liable for payment presupposed fault on that person's part, the existence of damage and a causal link between the fault and the damage. That liability extended to damage corresponding to the amount of unpaid VAT determined in the tax assessment addressed to the taxable company, which had meanwhile become final. However, the applicable national rule did not provide the person held liable for payment with a personal remedy against that tax assessment, and the final nature of the assessment prevented that person, in an action against the liability assessment, from challenging incidentally, for example, the taxable amount and the amount of VAT owed by the taxable company for which that person was being held jointly and severally liable.

Respect for the rights of defence must be ensured not only in potential judicial proceedings under Article 47 of the Charter, but also, as a general principle of EU law, during the administrative procedure leading to the adoption of the decision. That principle applies whenever an authority intends to adopt a measure that will adversely affect a person. The right to be heard, which forms an integral part of the rights of defence, requires that where a decision is liable significantly to affect the interests of its addressee, that person must be placed in a position effectively to make known his or her views on the matters on which the administration intends to rely. That obligation applies to Member State authorities when they adopt measures falling within the scope of EU law, even where the applicable EU legislation does not expressly provide for such a procedural right.



The rule requiring the addressee of an adverse decision to be able to express his or her views before the decision is adopted is intended to enable the competent authority properly to take all relevant factors into account. In particular, in order to ensure effective protection, that rule is intended to enable the person concerned to correct an error or submit information relating to individual circumstances that militate for or against adoption of the decision, or for or against a particular content of the decision.

Nevertheless, respect for the rights of defence is not absolute and may be subject to restrictions, provided that those restrictions genuinely correspond to one or more objectives of general interest pursued by the measure at issue and do not constitute, in relation to the objective pursued, a disproportionate interference.

The Court has already held that, as a general rule, respect for the rights of defence does not preclude a tax authority, in tax proceedings against a taxable person, from being bound by findings of fact and legal assessments made in related administrative proceedings concerning third parties in which the taxable person did not participate (see judgment of 16 October 2019, C-189/18, paragraph 46).

When reviewing respect for the rights of defence in related administrative proceedings, legal certainty, which is a general principle of EU law, must also be taken into account. Since the final nature of an administrative decision contributes to legal certainty, EU law does not, in principle, require an authority to withdraw an administrative decision that has

become final (see, to that effect, judgment of 27 February 2025, C-277/24).

The position is different, however, where the person concerned is in fact completely denied the right effectively to challenge the relevant findings of fact and legal assessments in proceedings concerning that person. Such an exclusion would impair the very essence of that person's rights of defence.

Accordingly, a national rule such as the liability rule at issue may impair the very essence of the rights of defence of the person held liable for payment if that person is completely denied the right effectively to challenge the findings of fact and legal assessments contained in the tax assessment that has become final. For the purposes of imposing liability, the tax assessment adopted in related administrative proceedings constitutes evidence that the conditions for imposing joint and several liability are satisfied, and the person held liable for payment must be able to challenge those matters on that basis.

A court hearing a dispute concerning the lawfulness of a liability assessment issued on the basis of a national rule such as the liability rule at issue must, in accordance with the requirements arising from Article 47 of the Charter, be able, in the context of an incidental review, to examine all findings of fact and legal assessments on which that decision is based, to the extent that they are decisive for the outcome of the action. In the present case, this applies in particular to the findings of fact and legal assessments contained in the tax assessment on

which the competent authority seeks to base the director's joint and several liability, including the taxable amount and the amount of unpaid VAT for which the director is being held liable.

Contrary to the Luxembourg Government's submissions, the possibility for the person held liable for payment to challenge the tax assessment incidentally on the basis of Article 47 of the Charter may not depend on whether, having regard to the scope of the director's duties, that director was in a position, during the tax proceedings against the taxable company or after the tax assessment was issued, effectively to challenge the lawfulness of that assessment on behalf of the company within the prescribed appeal period.

The rights of defence are subjective in nature, with the result that the parties concerned must themselves be able to exercise them effectively, irrespective of the nature of the proceedings to which they are subject. A person held liable for payment must be able, in his or her capacity as the liable person and in an action against the liability assessment, to challenge the findings of fact and legal assessments contained in the tax assessment on which the competent authority relied in determining joint and several liability. In such circumstances, it cannot be ruled out that the interests of the legal person and those of the natural person authorised to bind or represent it may differ (see, to that effect, judgment of 9 September 2021, C-546/18, and, by analogy, judgment of 10 November 2022, C-203/21).

Respect for the rights of defence enshrined in Article 47 of the Charter requires that a person held liable for payment must, in an action against the liability assessment and by way of an incidental challenge, be able to invoke any infringements of his or her fundamental rights committed during the tax proceedings conducted against the taxable company.

Fundamental rights are not absolute, however, and may be subject to restrictions, provided that those restrictions genuinely meet objectives of general interest and do not constitute, having regard to the objective pursued, a disproportionate and intolerable interference impairing the very substance of the rights guaranteed. Such restrictions may include the necessary protection of confidentiality or trade secrets (see, to that effect, judgment of 12 March 2026, C-477/24).

Where there is a conflict between, on the one hand, the interest of a person affected by an adverse measure in having the information necessary to exercise his or her rights of defence in full and, on the other hand, interests connected with the protection of confidentiality or trade secrets, it is for the competent courts to balance those competing interests in each individual case.

Please Note:

It remains to be seen whether and how the CJEU judgment will be applied by the German fiscal courts in VAT liability proceedings, in particular under Section 69 of the German Fiscal Code (AO). The extensive case law on Section 166 AO reflects a somewhat different, more restrictive tendency than the CJEU judgment. This is already apparent from the wording of Section 166 AO, which provides as follows: “Where the tax assessed against the taxable person can no longer be challenged, this must also be accepted [...] by any person who would have been in a position to challenge the [...] assessment as that person’s representative [... e.g. as managing director of a German limited liability company pursuant to Section 34 AO ...].” On a purely literal reading of Section 166 AO, a director would be bound in liability proceedings under Section 69 AO by the final nature of the company’s tax assessment if the director had authority to represent the company during the tax assessment proceedings.

Since the collection of VAT constitutes an implementation of EU law, Article 47 of the

Charter is also binding on the German fiscal courts and tax authorities. In its judgment, the CJEU also clarified that a restriction of the rights of defence may not be based on the fact that, in the original proceedings, the director had the theoretical or practical possibility of lodging appeals on behalf of the company as its representative. A strict application of the binding effect under Section 166 AO could therefore, in VAT matters, conflict with Article 47 of the Charter. In German liability proceedings concerning VAT debts, Section 166 AO should not be invoked against the director so as to prevent him or her from challenging the lawfulness of the tax assessment. In proceedings against the liability assessment under Section 69 AO, the director would need to be afforded an incidental review of the basis of the tax assessment, including the taxable amount, the amount of tax and procedural errors, to the extent necessary for his or her defence. In future, it may therefore be advisable not to combine VAT and other types of tax in a single liability assessment, as doing so could raise an additional procedural issue, given that the Charter applies only where EU law is being implemented.

06 | Transfer of a Totality of Assets I

General Court, Judgment of 2 September 2026 – Case T-397/25 – A&P Deco



This judgment of the General Court concerns the VAT treatment of a business transfer in Belgium in which the business property was not sold but was leased to the transferee exempt from VAT. The question then arose whether the change from taxable own use to VAT-exempt leasing required the transferor to adjust input VAT previously deducted on investments in the building. In this context, it should be noted that, until 31 December 2018, Belgium did not provide an option to charge VAT on commercial leases.

The case is also relevant to German practice because business transfers (“transfer of a going concern,” TOGC) are often accompanied by the transferor retaining ownership of the property. The business is transferred, while the building is merely leased.

Facts of the Case

A&P Deco NV (Deco) operated a garden centre in business premises that it owned and was subject to VAT on its transactions. The buildings were constructed in 2004/2005 and altered between 2008 and 2011; the VAT attributable to those input transactions was deducted as input VAT.

On 23 January 2013, Deco transferred its business operations to WR Woestijnroos BV (W) and leased

the business premises to W. The leasing of the property was exempt from VAT under Belgian law.

The Belgian tax authorities subsequently made a time-apportioned adjustment of the input VAT originally deducted on the construction and alteration works because the buildings were now used for a VAT-exempt leasing activity.

Deco argued in the legal proceedings that, by virtue of the fiction in Articles 19 and 29 of the VAT Directive, the transferee was the transferor's successor and the obligation to adjust input VAT therefore passed to the transferee. Deco maintained that no input VAT adjustment should be made at the level of the transferor for those parts of the business premises that were leased to the transferee and used by it to carry on the transferred taxable activity.

The Belgian Court of Cassation asked the Court whether, where a business transfer is combined with the simultaneous VAT-exempt leasing of the business property, an adjustment is required in respect of input VAT deducted by the transferor on the acquisition, construction, alteration or improvement of that property.

Grounds for the Decision

In light of its previous case law, the transaction at issue in the main proceedings could be classified as a transfer of a totality of assets or part thereof.

The referring court nevertheless asked whether the leasing of the property in question, intended to enable the transferred economic activity to be contin-

ued, itself formed part of the transfer of a totality of assets or part thereof within the meaning of Articles 19 and 29 of the VAT Directive.

First, although an intangible asset such as a leasehold right may form part of a transfer of a totality of assets or part thereof, such an asset must have existed before the transfer. A leasehold right can therefore be regarded as forming part of such a transfer only if it already existed and was transferred as an intangible asset of the business. By contrast, where the transferor, in its capacity as owner of the property, concludes a new commercial lease with the transferee at the time of the transfer, it does not transfer a pre-existing right, i.e. a right already forming part of the transferor's assets, but creates a new right of limited duration. In those circumstances, such a right cannot be regarded as forming part of the transfer of a totality of assets or part thereof.

Secondly, the fact that, pursuant to Articles 19(1) and 29 of the VAT Directive, the transferee becomes the successor to the transferor is merely a consequence of neither a supply of goods nor a supply of services being treated as having taken place. That fiction therefore applies only to goods and services treated as not having been the subject of a supply of goods or services. However, the creation of a leasehold right by a transferor that owns the property cannot be equated with the transfer of a pre-existing right. It follows that a leasehold right over property created by the transferor and lessor in favour of the transferee in connection with a business transfer between them, in order to enable the transferee to continue the

transferred economic activity in that property, does not form part of the transfer of a totality of assets or part thereof, or of a totality of services.

Accordingly, the transferor of the business, which remains the lessor of the property used by the transferee for the transferred taxable activity, remains liable to make the adjustment. The fact that the transferee carries on the taxable activity acquired as part of the transfer of a totality of assets or part thereof cannot call the transferor's adjustment obligation into question. That fact has no bearing on the position of the transferor and lessor described above, in which the property is now used by the transferor for a VAT-exempt activity.

That conclusion is not called into question by the judgment of 29 April 2004, Faxworld (C-137/02), in which the Court granted a company the right to deduct input VAT even though that company had not itself carried out any taxable output transaction, thereby allowing it to take into account the taxable transactions of the transferee. The facts underlying that judgment were highly specific: the transfer of a totality of assets or part thereof in that case was linked to the cessation of the transferor's activity, the transferor being a pre-incorporation entity, namely a civil-law partnership whose purpose was to prepare the resources required for the activity of a public limited company that was to be incorporated.

In that case, the Court emphasised that the pre-incorporation entity did not even intend to carry out taxable transactions itself, since its sole corporate

purpose was to prepare the activity of the public limited company. In those specific circumstances, a pre-incorporation entity transferring the totality of its assets had to be able to take account of the taxable transactions of the transferee, namely the public limited company, in order to deduct input VAT on the inputs it had acquired for the purposes of those taxable transactions. This strict limitation to the particular facts is also reflected in the operative part of that judgment, according to which a partnership established solely for the purpose of forming a company limited by shares is entitled to deduct input VAT on services and goods acquired where, in accordance with its corporate purpose, its only output transaction was the transfer for consideration of the acquired supplies to that company following its incorporation, provided that the other conditions were also met.

The General Court also addressed the adjustment mechanism under Articles 185 et seq. of the VAT Directive, which is intended to maintain the close relationship between input VAT deduction and taxable output transactions. A change from taxable own use to VAT-exempt leasing necessarily alters the factors taken into account in determining the input VAT deduction. In Deco's case, there had been a change to exempt use. Following the transfer, the lessor was in the same position as any third party leasing commercial property exempt from VAT. Exempting the lessor from the adjustment obligation would give it an unjustified competitive advantage.

Please note:

German law and the relevant case law are consistent with the General Court's findings.

In the case at hand, the property (the business building) had not been transferred to the transferee. Deco had merely leased the building to the transferee under a newly concluded commercial lease. The Court clarified that this new lease did not form part of the transfer of the business because it did not transfer a pre-existing right but created a new right. As the building remained the property of A&P Deco and was not transferred, the VAT succession in respect of that asset could not pass to the transferee either.

The outcome would be exactly the same in Germany (without opting for taxation): where a German taxable person transfers its business as a transfer of a totality of assets or part thereof but retains the business property and leases it to the transferee exempt from VAT, the transferor must itself adjust the input VAT relating to the building under Section 15a(1) German VAT Act (UStG). Section 15a(10) UStG would not apply to the building because it was not transferred. The transferee succeeds only in respect of the assets actually transferred, such as machinery,

business equipment or inventories. As regards the retained building, the use changes at the level of the original owner from taxable own use to VAT-exempt leasing.

However, it must not be overlooked that, in 2013, Deco had no legal possibility of opting for VAT taxation of the lease, since a general B2B option to charge VAT on leases in Belgium was not introduced until 1 January 2019. Nor was that contrary to EU law, because Article 135(1) (l) of the VAT Directive expressly provides that Member States are, in principle, to exempt the leasing and letting of immovable property from VAT. The VAT exemption for leasing is therefore the standard position under EU law and not an impermissible derogation.

Although Article 135(2) of the VAT Directive provides that Member States may provide for further exclusions from that exemption, this is merely an option available to the individual Member States, not an obligation. Belgium therefore did not infringe EU law by not offering such an option in 2013. Since Germany has had the option to tax under Section 9 UStG since 1968, the Belgian issue could have been resolved in Germany by exercising that option.

07 | Transfer of a Totality of Assets II

General Court, Judgment of 2 September 2026 – Case T-413/25 – Peckeger



In its judgment of 2 September 2026, the General Court addressed a request for a preliminary ruling from Austria concerning a particular issue in the VAT treatment of the contribution of developed properties that were let subject to VAT to a limited liability company (GmbH) without the issue of additional shares.

Facts of the Case

F R operated a sole proprietorship whose assets consisted of several let properties in Austria. The letting was subject to VAT and entitled F R to deduct input VAT.

In 2007, F R contributed those properties to R GmbH on the basis of an agreement for a contribution in kind and transfer. He was the sole shareholder and managing director of R GmbH. No additional shares were issued. The GmbH continued the taxable letting activity. F R treated the contribution as a non-taxable transfer of a totality of assets within the meaning of Article 19 of the VAT Directive. The Austrian tax office, however, classified the transaction as a taxable exchange in return for shares. It refused to classify the transaction as a transfer of a totality of assets on the ground that F R merely carried on an asset-management activity,

generating income from letting and leasing, rather than a commercial letting activity within the meaning of national income tax law. On that basis, the tax office made an input VAT adjustment to the detriment of the applicant. Following a decision by the Federal Fiscal Court, the dispute reached the Austrian Supreme Administrative Court (VwGH), which stayed the proceedings and referred questions to the General Court for a preliminary ruling on the interpretation of Articles 2(1)(a), 16 and 19 of the VAT Directive. In particular, the questions concerned whether Austria's restriction of the transfer-of-a-totality-of-assets regime to certain categories of income was compatible with EU law and whether Article 19 of the VAT Directive has direct effect.



Grounds for the Decision

Article 19(1) of the VAT Directive permits Member States to treat the transfer of a totality of assets or part thereof as if no supply of goods had taken place and to regard the transferee as the successor to the transferor. Where that option is exercised, such transfers are outside the scope of VAT under Article 2 of the VAT Directive.

Article 19(2) of the VAT Directive permits only two types of restriction: measures to prevent distortion of competition where the transferee is not wholly subject to tax and measures to prevent tax evasion or avoidance. Those grounds are exhaustive.

Article 19 of the VAT Directive precludes a national rule that restricts the principle that there is no supply of goods in the case of a transfer of a totality of assets or part thereof to contributions of assets used to generate particular categories of income for income tax purposes. Where a Member State exercises the option to treat transfers of assets as non-taxable, it must in principle apply that treatment uniformly and may restrict it only under the narrow and exhaustive conditions set out in Article 19(2) of the VAT Directive. Article 19(1) of the VAT Directive is unconditional and sufficiently precise to have direct effect. Where a Member State has restricted the scope of that principle in a manner contrary to EU law, as Austria had, a taxable person may rely directly on the Directive before the national courts in order to obtain classification of the transaction as a non-taxable transfer.

The General Court also answered the referring court's additional questions even though, once the transaction was classified as a transfer of a totality of assets and therefore as non-taxable, those questions were no longer necessary to resolve the case. The Court considered that, if a transfer of a totality of assets were denied, the transaction could constitute an application of goods treated as a supply for consideration. However, it did not itself determine whether the contribution without the issue of additional shares actually involved an exchange of supplies, leaving that assessment to the referring court. The General Court stated: "Subject to verification by the referring court, the legal relationship between a taxable person such as F R – who, on the basis of an agreement for a contribution in kind and transfer, transferred ownership of the properties concerned to a company of which he is the sole shareholder without receiving any actual consideration – and that company does not appear to involve reciprocal performance within the meaning of the case-law cited." The judgment therefore does not provide substantive guidance on whether the contribution of the properties involved an exchange of supplies.

Please note:

The judgment reinforces the principle that the VAT treatment of transfers of assets – regulated in Germany as a transfer of a totality of assets or part thereof under Section 1(1a) German VAT Act (UStG) – is an autonomous concept of EU law. German tax authorities and the legislature may not arbitrarily make that treatment dependent solely on income-tax criteria or categories of income. This provides legal certainty for taxable persons transferring combinations of assets that, for income tax purposes, are classified as mere asset management, such as the letting of property.

The Austrian court must now determine whether the let properties constitute part of a totality of assets. If it answers that question in the affirmative – which may be assumed, given that R GmbH continued the letting activity without interruption – Article 19 of the VAT Directive applies directly. The contribution is then a non-taxable transaction because it is treated as involving no supply of goods, and taxation as an application of goods under Article 16 of the VAT Directive is definitively excluded.

When property assets are contributed in Germany, it must always be examined whether there is a transfer of a totality of assets or part thereof within the meaning of Section 1(1a) UStG and therefore a non-taxable transaction.

It must also be critically examined whether, and to what extent, a contribution in kind may constitute a transaction within the scope of VAT from the contributor's perspective even where no new shares are issued but the value of the existing shares held by the contributor increases as a result. The VAT treatment from the perspective of the company receiving the contribution must be assessed separately.

08 | Transfer of a Totality of Assets III

General Court, Judgment of 9 September 2026 – Case T-366/25 – Szytelbiecka



The judgment centres on whether a gift of a 50% interest in a business to each of two persons may be classified as a non-taxable transfer of a totality of assets under Article 19 of the VAT Directive.

Facts of the Case

The applicant, D. B., was the proprietor of the Polish sole proprietorship P. She intended to transfer the entire assets of that business to her two daughters, A. K. and P. K., free of charge, with each daughter receiving a 50% co-ownership interest. D. B. retained no assets and intended to cease her business activity immediately upon making the gift.

The two daughters already operated a partnership together, in the legal form of a general partnership, and intended immediately to contribute their acquired interests in the business to that partnership as contributions in kind, so that business P. could be integrated into and continued by the partnership.

In its advance tax ruling, the Polish tax authority refused to apply the VAT exemption or treatment as non-taxable applicable to business transfers. It reasoned that, where co-ownership interests were granted, neither transferee received an independent economic unit with which she could continue the business activity independently, and that the business would be continued only by a third legal

entity, namely the partnership. The referring Polish Supreme Administrative Court asked the General Court whether the transfer, free of charge, of one half of a business to each of two persons, followed immediately by the contribution of those interests to a partnership, constitutes a transfer of a totality of assets within the meaning of Article 19(1) of the VAT Directive.

Grounds for the Decision

The transfer, free of charge, of one half of a business to each of two natural persons, followed by the contribution of those interests to a company, does not constitute a transfer of a totality of assets or part thereof within the meaning of Article 19(1) of the VAT Directive. Under Article 1(2) of the VAT Directive, every transaction must, as a rule, be regarded as a distinct and independent supply. Several transactions may be treated as a single, indivisible economic transaction only where they are so closely linked that separating them would be artificial. As the two daughters were separate legal persons, were each free to dispose of their own 50% interest and the subsequent contributions to the partnership were neither a legal condition of the gifts nor made at the same time, there were four legally separate and independent transactions: two gifts and two contributions.

The application of Article 19(1) of the VAT Directive requires two cumulative conditions: the transfer of a combination of assets capable of enabling an independent economic activity to be continued and the transferee's intention to continue operating that business.

The transfer of a mere 50% interest did not provide either transferee with an independent unit with which she could continue the business independently. The transferees' mere intention immediately to contribute the interests to a partnership could not remedy the absence of an independent economic unit at the time of the initial transfer.

As the first condition, namely the transfer of an independent economic unit, was not satisfied, there was no need to examine the second condition, namely the intention to continue the business activity.

Please note:

Where a sole proprietorship is transferred in undivided fractional interests, for example 50% to each of two or more transferees, there is no transfer of a totality of assets or part thereof under Section 1(1a) German VAT Act (UStG). Each transferee acquires only a co-ownership interest that, taken on its own, does not enable the business to be continued independently. The EU-law principle that each transaction must be considered separately prevents the initial transfer, in this case the gift, and the subsequent contribution in kind to a partnership from being combined into a single preferentially treated transaction.

As Section 1(1a) UStG does not apply, the gifts of the respective 50% interests do not benefit from treatment as non-taxable. The transfers are subject to the general rules of the German VAT Act. This includes, in particular, examining whether there are deemed supplies without consideration under Section 3(1b) UStG, whether any VAT exemptions apply and whether input VAT adjustments are required under Section 15a UStG.

09 | Intra-Community Supply and Triangular Transaction Involving Products Subject to Excise Duty

General Court, Judgment of 9 September 2026 – Case T-614/25 – Trading 4



The General Court considered whether a supply in a triangular transaction is exempt from VAT solely because products subject to excise duty are supplied under a duty suspension arrangement, the final customer in the third Member State is liable for VAT and the goods were actually transported to that third Member State. Note: the revised Article 36a of the VAT Directive, which governs the attribution of transport in chain transactions, was not yet applicable to the years at issue, 2016 and 2017.

Facts of the Case

A company registered for VAT in Latvia (Trading 4) supplied petroleum products under a duty suspension arrangement between 2016 and 2017 to companies established in Estonia or the United Kingdom (intermediary purchasers B), which were registered for VAT there. On the same day, the intermediary purchasers B resold the goods to their own customers in other Member States (final customers C).

The goods were transported directly from Trading 4 to companies C. The transactions therefore formed a chain of several successive supplies involving only one intra-Community transport. Trading 4 treated its supplies to B as intra-Community supplies subject to the zero rate under Article 138(1) of the VAT Directive.

Following a tax audit, the Latvian tax authorities classified those supplies as domestic transactions and subjected them to the standard Latvian VAT rate. They reasoned that the right to dispose of the goods as owner within the meaning of Article 14(1) of the VAT Directive had passed from Trading 4 to B before the transport to C; B, in turn, had sold the goods to C before they left Trading 4's warehouse. Trading 4 was also aware that the goods had been resold directly to a customer in a third Member State.

Under the Latvian VAT legislation, application of the zero rate depends, inter alia, on evidence that the goods have been dispatched or transported from Latvia to another Member State and on the customer using a valid VAT identification number issued by another Member State.

The referring court asked whether, in the case of products subject to excise duty supplied under a duty suspension arrangement in a triangular transaction, the fact that VAT is payable by customer C in the Member State of destination and that actual transport from the first Member State has been proved is sufficient to exempt the supply from A to B under Article 138(1) of the VAT Directive. It also asked whether the simplification under Article 141 and the transfer of VAT liability under Article 197(1) of the VAT Directive affect that assessment.

Grounds for the Decision

A VAT-exempt intra-Community supply requires the right to dispose of the goods as owner to have been transferred to the customer, proof that the goods were transported to another Member State and physical departure of the goods from the territory of the Member State of dispatch.

Where there are two successive supplies but only one cross-border transport, that transport can be attributed to only one of the two supplies. Only the supply to which the transport is attributed may be exempt under Article 138(1) of the VAT Directive.

Attribution of the transport requires an overall assessment of all the circumstances of the individual case. The decisive issue is when the second transfer of the right to dispose of the goods as owner to final customer C took place. If the second transfer, namely the supply from B to C, occurred before the intra-Community transport, the transport cannot be attributed to the first supply from A to B. Transfer of the right to dispose of goods as owner requires neither physical possession nor transfer of legal title under national law. It requires the factual authority to make economic decisions concerning the goods, for example the decision to resell them. Relevant indications include who arranged the transport, who bears the logistics costs and who exercises functional control over the movement of the goods.

The excise-duty suspension arrangement does not affect the requirements governing the transfer of the right to dispose of goods as owner for VAT purposes. The chargeable event for VAT is the supply, not the charging of excise duty. Although the time at which the electronic administrative document (e-AD) is signed may serve as evidence that the goods physically left the territory, it does not determine when the right to dispose of the goods as owner was transferred.

The simplification under Article 141 of the VAT Directive merely relieves intermediary purchaser B in respect of its intra-Community acquisition. Logically, it presupposes that the first supply from A to B already qualifies as a VAT-exempt intra-Community supply under Article 138(1) of the VAT Directive. Whether B and C applied Article 141, or whether C is liable for VAT in the Member State of destination, is irrelevant to the attribution of the transport to the first supply.

The three circumstances considered, namely transport under a duty suspension arrangement, VAT liability of final customer C in the Member State of destination and proof that the goods physically left the first Member State, are not in themselves sufficient to exempt the first supply from VAT. The national court must determine, on the basis of an individual assessment, when the right to dispose of the goods as owner was transferred to C.

Please note:

According to the General Court's case law, the transfer of the right to dispose of tangible property as owner is an autonomous economic concept of EU law within the meaning of Article 14(1) of the VAT Directive. It requires neither physical possession of the goods nor their physical delivery to, or receipt at, the customer's own premises. Nor is it limited to the formal methods of transferring ownership under the applicable national law; it covers any transfer of factual authority.

Transport under a duty suspension arrangement has no bearing on the conditions governing the transfer of the right to dispose of the goods as owner for VAT purposes. The date on which the electronic administrative document (e-AD) is signed does not determine when that right is transferred.

In summary, the fact that products subject to excise duty are transported under a duty suspension arrangement, that VAT in a triangular transaction is payable by customer C in the Member State of destination and that actual transport to a third Member State has been proved is not sufficient automatically to classify the first supply from A to B as an intra-Community supply subject to the zero rate under Article 138(1) of the VAT Directive.



10 | Fixed Establishment

German Federal Fiscal Court, Reference to the CJEU of 7 May 2026 – V R 12/24



The question of what constitutes a “fixed establishment” is becoming increasingly important in practice as technical installations become more automated. The case concerns a technical installation in Germany that is operated largely automatically and maintained only by a subcontractor. It involves an Austrian waste-disposal company that remotely monitors a drying installation in Germany, while personnel are present on site only sporadically. At its core, the issue is who is liable for VAT: the foreign supplier or the German customer under Section 13b German VAT Act (UStG).

Facts of the Case

The case concerns a municipality that operates a sewage treatment plant. Sewage sludge generated there is dewatered and dried in a drying installation owned by an Austrian limited partnership, A-KG (A), installed on the site, and is subsequently disposed of. The installation operates largely automatically; the sludge is turned automatically and the installation is filled only three or four times a year. The necessary on-site work – loading, removal, disposal and rectification of faults – is performed by a German company, B-GmbH, as A's subcontractor. The installation is controlled and monitored remotely from A's registered office in Austria.

Until 2011, the municipality had contractual relations with A's German branch, which issued invoices showing VAT separately. After that branch was closed, A invoiced directly from Austria, stating that the VAT liability was transferred under Section 13b UStG. From 2015, an Austrian company, C-GmbH, became the contractual partner, again under a reverse-charge clause. The municipality used its VAT identification number but did not declare VAT under Section 13b UStG and did not claim an input VAT deduction. Following a special VAT audit, the tax office assessed VAT under Section 13b UStG without allowing an input VAT deduction, but was unsuccessful before the Munich Fiscal Court (judgment of 16 May 2024, 14 K 103/23). Following an appeal on a point of law, the German Federal Fiscal Court referred the dispute to the CJEU.

Grounds for the Decision

The German Federal Fiscal Court is seeking clarification from the CJEU as to whether a technical installation located in Germany and involved in the supply of a service constitutes a fixed establishment for VAT purposes where the foreign taxable person remotely monitors and maintains the installation from its place of business and engages a subcontractor to operate it on site, whose personnel work at the installation.

Against that background, the German Federal Fiscal Court referred two closely connected questions to the CJEU:

Must an establishment involved in the supply of a service – in this case, a waste-disposal service – be capable of supplying that service fully and independently in order to constitute a fixed establishment? The drying installation performs only part of the waste-disposal service, namely drying the sewage sludge; the remaining disposal takes place outside the installation.

What requirements apply to the “human resources” of a fixed establishment? Is the personnel of a subcontractor working at the installation sufficient where the taxable person otherwise monitors and maintains the installation remotely?

The German Federal Fiscal Court referred in this context to the CJEU's case law. In *Titanium* (C-931/19), the CJEU held that a let property without the lessor's own staff did not constitute a fixed establishment, even where third-party personnel performed administrative tasks. In *Berlin Chemie* (C-333/20) and *Adient* (C-533/22), the CJEU clarified that third-party personnel and technical resources may also establish a fixed establishment where the taxable person can dispose of them in a manner comparable to its own resources, for example under contracts that cannot be terminated at short notice. It remains unclear, however, whether engaging a subcontractor that retains authority to give instructions to its own personnel is sufficient for those human resources to be attributed to the principal.

Please note:

At the outset, a case of this kind should arguably have addressed the significance of Section 13b(7), sentence 5 UStG. Where it is unclear where the supplier is established, the customer must obtain a certificate from the competent tax office confirming establishment in Germany (form USt 1 TS). The question then arises as to the consequences where the customer – in this case, the municipality – does not request that the supplier obtain and present such a certificate.

The statutory provision states: “Where it is doubtful whether the taxable person meets those conditions, the customer is not liable for the tax only if the taxable person proves, by means of a certificate issued by the tax office responsible under the provisions of the German Fiscal Code for taxing its transactions, that it is not a taxable person within the meaning of sentences 1 and 2.”

The customer is therefore not required to carry out difficult investigations into whether a fixed establishment exists somewhere in Germany and whether it is involved in the specific supply. Rather, where the conditions in sentence 5 are

met, the customer may or must obtain official evidence. This is also confirmed by Section 13b.1(30), sentence 1 of the German VAT Application Decree (UStAE), which dates from 2011. Accordingly, where, based on the circumstances of the individual case, it is uncertain for the customer whether the supplier is established in Germany – for example, because the establishment issue is legally or factually unclear or the supplier's information gives rise to doubts – the customer is not liable for the tax only if the supplier presents a corresponding certificate from the competent tax office confirming that it is not a taxable person within the meaning of Section 13b UStG. The existence of Section 13b(7), sentence 5 UStG therefore shows that the legislature specifically envisaged situations in which the customer cannot reliably ascertain the supplier's actual circumstances. The case also raises the question of the legal consequences where the customer fails to resolve existing doubts, even though it knew that the drying installation was located in Germany.

The German Federal Fiscal Court and the Fiscal Court appear to assume that only the objective circumstances are relevant. If it is objectively established that the requirements of Section 13b UStG are not met, failure to obtain the certificate cannot, by itself, trigger Section 13b UStG. There are good reasons for taking that view and for regarding Section 13b(7), sentence 5 UStG merely as an evidentiary and legitimate-expectations rule governing whether the customer is protected from VAT liability. On that interpretation, failure to make use of the possibility of having the supplier apply for a certificate does not itself make the customer liable for VAT under Section 13b UStG. The statutory procedure then serves only to demonstrate, where the customer has doubts, that the reverse-charge mechanism does not apply.

It therefore remains the case that a customer established in Germany is not liable for VAT on a service supplied by a business established abroad only where it is objectively established

that the service was supplied by that business's fixed establishment in Germany, irrespective of whether the customer had, or ought to have had, subjective doubts as to where the supplier was established (see German Federal Fiscal Court decision of 1 June 2011, XI B 104/10).

The CJEU's decision will be particularly relevant in practice for the waste-disposal, energy and infrastructure sectors. If the drying installation is classified as a fixed establishment of the Austrian businesses, those businesses would be established in Germany and would themselves be liable for VAT under Article 193 of the VAT Directive and Section 13a UStG; Section 13b UStG would not apply in that respect. If, by contrast, the CJEU finds that there is no fixed establishment, the reverse-charge mechanism will continue to apply, with the German municipalities or other customers being liable for VAT.

11 | Input VAT Deduction on Advisory Costs Incurred in Pursuing Claims for Damages

German Federal Fiscal Court, Judgment of 7 May 2026 – V R 15/24



Whether input VAT may be deducted on advisory costs incurred in pursuing claims for damages has long been an issue in practice. In the present judgment, the German Federal Fiscal Court provided an important clarification for project and contract structuring: a taxable person may deduct input VAT on advisory services where those services are used to enforce a claim whose origin lies in an economic activity that was intended, even if that activity was ultimately never carried on.

Facts of the Case

The case concerned a German limited liability company (GmbH) that had entered into an operator agreement with a customer for the development and operation of a project. The applicant was required to pre-finance the planning and set-up costs as well as the project risk. Ongoing activities, including an initial payment, were to be remunerated only once the project actually commenced. The agreement was intended to run for several years and could be terminated only for good cause. However, due to legal concerns, the customer terminated the operator agreement before the project began. The applicant asserted a claim for damages and engaged external advisory firms for that purpose. It claimed an input VAT deduction in respect

of those advisory services, which the tax office denied following a special VAT audit for 2020.

The Berlin-Brandenburg Fiscal Court (judgment of 29 May 2024, 7 K 7122/22) upheld the action. It found a direct and immediate link between the advisory costs and the applicant's economic activity. The payments made by the customer constituted compensation arising from the originally intended economic activity. The advisory services were overhead costs incurred in winding up that activity. The German Federal Fiscal Court confirmed that view and dismissed the tax office's appeal on a point of law.

Grounds for the Decision

The legal basis is Section 15(1), sentence 1, no. 1 German VAT Act (UStG), which implements Article 168(a) of the VAT Directive. Under those provisions, a taxable person is entitled to deduct input VAT where goods or services are used "for the purposes of his taxed transactions". Under EU law, this requires an economic activity within the meaning of Article 9 of the VAT Directive or Section 2(1) UStG

and a direct and immediate link between the input transactions and taxed output transactions or the taxable person's economic activity as a whole. According to the CJEU's case law, including *Kretztechnik* (C-465/03), *Sveda* (C-126/14), *INZO* (C-110/94) and *Fini H* (C-32/03), general expenditure or "overheads" may also give rise to a right to deduct input VAT where the expenditure has its exclusive cause in the economic activity.

The German Federal Fiscal Court expressly clarified that a taxable person acquiring a service in order to enforce a claim whose origin lies in an economic activity, including an activity that was merely intended, is entitled to deduct input VAT on that service. The decisive factor is that the advisory costs constitute general expenditure relating to the intended activity and therefore form cost components of the economic activity. The fact that the activity was ultimately not commenced or had already ceased does not preclude the input VAT deduction. Under the system of the VAT Directive, VAT must be neutral in relation to economic activities, irrespective of their results.



Please note:

Even where there is no direct and immediate link between a particular input transaction and one or more output transactions giving rise to a right to deduct, a taxable person is recognised as having a right to deduct input VAT where the costs of the services in question form part of the taxable person's general expenditure and, as such, are cost components of the goods or services supplied by that person. However, those costs have a direct and immediate link with the taxable person's economic activity only where that activity is their exclusive cause (see CJEU judgments of 8 February 2007, C-435/05; 21 February 2013, C-104/12; and 10 November 2016, C-432/15).

Accordingly, the costs of the advisory services obtained by the applicant constituted general expenditure relating to its economic activity as a whole. A taxable person acquiring a service in order to enforce a claim whose origin lies in an economic activity – including an economic activity that was merely intended but never carried on – is entitled to deduct input VAT on that service. According to the German Federal Fiscal Court, the subsequent use of the compensation by the taxable person is irrelevant because the decisive factor is the origin of the claim.

Please note: tax advisory costs incurred in connection with the transfer by way of gift of limited partnership interests are not attributable to the business of the limited partnership and do not entitle the partnership to deduct input VAT (Baden-Württemberg Fiscal Court, judgment of 11 March 2026, 14 K 1829/23; appeal pending before the German Federal Fiscal Court under case V R 13/26).

The judgment strengthens the neutrality of VAT in the context of failed or discontinued projects. Advisory costs incurred in pursuing claims for damages may qualify as general expenditure of the economic activity and therefore give rise to a right to deduct input VAT where the claim for damages has its exclusive origin in a taxable activity that was at least intended. In practice, businesses should clearly document project-related advisory services and substantiate their connection with the economic activity, particularly where contracts are terminated at an early stage.

12 | Cash Accounting and the Net-Worth Comparison Method

German Federal Fiscal Court, Judgment of 16 April 2026 – V R 16/24



In this judgment, the German Federal Fiscal Court continued and clarified its existing case law on cash accounting for professional services. A partnership of lawyers, auditors and tax advisers sought to account for VAT on the basis of consideration received under Section 20, sentence 1, no. 3 German VAT Act (UStG), even though, since its formation, it had voluntarily determined its profits using the net-worth comparison method under Section 4(1) German Income Tax Act (EStG). The German Federal Fiscal Court held that, in those circumstances, there was no entitlement to use cash accounting.

Facts of the Case

The tax office had revoked cash accounting, which had previously been permitted in practice, with effect from 2019 and refused any fresh authorisation from 2021 onwards. The Baden-Württemberg Fiscal Court dismissed the direct action and the appeal on a point of law was unsuccessful. The German Federal Fiscal Court upheld its judgment of 22 July 2010 (V R 4/09): Section 20, sentence 1, no. 3 UStG permits cash accounting only for members of the liberal professions who are not required to keep books and determine their profits under Section 4(3) EStG using the cash-basis method.

Grounds for the Decision

The German Federal Fiscal Court relied on the legislative history of the provision. Section 20, sentence 1, no. 3 UStG was introduced by the Introductory Act to the German Fiscal Code (Article 17, no. 9 EGAO) to ensure that members of the liberal professions who, following the abolition of their statutory bookkeeping obligation under Sections 141 and 148 German Fiscal Code (AO), had lost the option previously available under Section 20(1), sentence 1, no. 2 UStG 1967 could continue to use cash accounting. The objective was to align the record-keeping requirements under VAT law, namely Sections 20 and 13(1), no. 1(b) UStG, with those under income tax law, namely Sections 4(3) and 11 EStG. Members of the liberal professions using the cash-basis method for income tax purposes were not to be required to maintain additional records of receivables solely for VAT purposes.

The German Federal Fiscal Court's central argument was the EU-law principle of neutrality under Articles 63 and 66(1)(b) of the VAT Directive. When exercising the option to tax certain transactions upon receipt of payment, Member States may not treat taxable persons carrying out comparable transactions differently. A tax advisory company in the legal form of a GmbH is not covered by the wording of Section 20, sentence 1, no. 3 UStG in conjunction with Section 18(1), no. 1 EStG; it is subject to corporate income tax and required to keep books. If, by contrast, a self-employed tax adviser or partnership that voluntarily keeps books and prepares balance

sheets were allowed to use cash accounting, comparable transactions would be treated differently solely because of the legal form.

To preserve neutrality as regards legal form, the German Federal Fiscal Court interpreted Section 20, sentence 1, no. 3 UStG in accordance with its purpose. The provision applies only as long as no proper accounts involving a net-worth comparison under Section 4(1) EStG are kept and used for tax purposes in respect of the relevant transactions, irrespective of whether the bookkeeping is required by law or undertaken voluntarily. Voluntary bookkeeping involving an opening balance sheet and annual accounts therefore excludes cash accounting because the taxable person is placed on the same footing as businesses that are required to keep books.

At the same time, the German Federal Fiscal Court drew a distinction: maintaining lists of outstanding items or other records of receivables does not preclude profit determination under Section 4(3) EStG and consequently does not exclude cash accounting under Section 20, sentence 1, no. 3 UStG, provided that no net-worth comparison is carried out. The decisive factor is the chosen method of determining profits, not the mere existence of technical auxiliary records.

The applicant's further arguments were also unsuccessful. Neither the legislative history nor the addition of Section 20, sentence 1, no. 4 UStG by the Annual Tax Act 2022 for legal persons governed by public law, nor the amendments introduced

by the Annual Tax Act 2024 under Section 15(1), sentence 1, no. 1, sentence 2 and Section 27(41) UStG, extended the scope of Section 20, sentence 1, no. 3 UStG to members of the liberal professions who voluntarily keep books. In its decision of 20 March 2013 (1 BvR 3063/10), the German Federal Constitutional Court had confirmed that the German Federal Fiscal Court's restrictive interpretation was constitutionally tenable. Nor was there any entitlement under Article 3(1) German Basic Law to an extension of an administrative practice that was itself contrary to the law.

Please note:

Members of the liberal professions within the meaning of Section 18(1), no. 1 EStG may claim cash accounting under Section 20, sentence 1, no. 3 UStG only if they are neither legally required to keep books nor voluntarily keep books and determine their profits using the net-worth comparison method under Section 4(1) EStG.

The decisive consideration is alignment with the method of determining profits under income tax law.

13 | Flat-Rate Charge for Access to a Subsidised Staff Canteen

German Federal Fiscal Court, Judgment of 16 April 2026 – V R 1/25



This judgment of the German Federal Fiscal Court concerns the VAT treatment of canteen subsidies in the context of the supply of temporary workers. A hirer granted temporary workers access to meals at reduced prices and charged the flat-rate costs incurred to the temporary employment agency, which in turn recharged the same amount to the hirer.

Facts of the Case

The case arose from a framework agreement for the supply of temporary workers concluded between the applicant, a temporary employment agency, and a public limited company, A, as hirer. Under a group works agreement, A was required vis-à-vis its works council to make the staff canteen available to temporary workers on the same subsidised terms as to its own employees. This was implemented by means of an addendum to the framework agreement and a separate canteen-use agreement. For each temporary worker and day of assignment, A charged the applicant a flat-rate amount per person (“per-capita flat rate”) plus VAT at 19%. The applicant, in turn, recharged the same net per-capita flat rate to A, in addition to the remuneration for supplying the temporary workers, likewise showing VAT separately.

The applicant claimed an input VAT deduction on A's invoices and treated the recharged per-capita flat rate as part of the consideration for the supply of temporary workers. The tax office denied the input VAT deduction on the ground that there was no reciprocal supply relationship and that, in economic terms, the payments constituted meal subsidies. The Munich Fiscal Court, by contrast, considered that A had supplied a service to the applicant for consideration, namely increasing the applicant's attractiveness as an employer, and allowed the input VAT deduction.

Grounds for the Decision

The German Federal Fiscal Court set aside the Fiscal Court's judgment and dismissed the action. Merely charging and recharging the flat-rate costs did not constitute a taxable supply. In economic reality, A alone was intended to bear the costs of actual canteen use. The reciprocal invoicing served only to allocate costs internally to cost centres within the A group, with the applicant being involved as a third party.

As A did not actually supply a service to the applicant, the statutory requirements for an input VAT deduction under Section 15 German VAT Act (UStG) were not met. Merely showing VAT on an invoice does not create a right to deduct input VAT. The fact that the temporary workers could use the canteen did not constitute a separate supply to the applicant. A was already required to grant temporary workers access to communal facilities under the works agreement and, from 1 December 2011, by law under Section 13b(1) German Temporary Employment Act (AÜG). The contractual agreement with the applicant therefore had no constitutive effect in that respect.

The same applied, conversely, to the applicant's recharge to A. As there was no supply in that direction either, the applicant nevertheless owed the VAT shown without justification under Section 14c(2) UStG. Nor did the applicant make a supply to its own temporary workers in relation to use of the canteen, since access to the subsidised canteen was granted directly by A.

Please note:

A per-capita flat-rate charge for access to a subsidised staff canteen that is merely charged and recharged between the hirer and the temporary employment agency does not constitute consideration for a supply for VAT purposes. It is an internal cost allocation.

Consequently, no input VAT deduction arises under Section 15(1), sentence 1, no. 1 UStG, while the party issuing the invoice nevertheless owes the VAT shown under Section 14c(2) UStG.

14 | De minimis Threshold for Input Tax Adjustments

Munich Fiscal Court, Reference to the CJEU of 16 July 2026 – Case 14 K 8/25



The Munich Fiscal Court's reference to the CJEU fundamentally calls into question, in light of EU law, the practical application of input VAT adjustments following a change in the taxation method. Specifically, the case concerns the EUR 1,000 de minimis threshold under Section 44(1) German VAT Implementing Regulation (UStDV), which precludes an adjustment under Section 15a German VAT Act (UStG) where the input VAT attributable to the acquisition or production costs of an asset does not exceed that amount.

Facts of the Case

The applicant operates an agricultural business and was subject to flat-rate VAT taxation under Section 24 UStG in 2022. With effect from 1 January 2023, it changed to taxation under the general VAT rules. In 2023, the year at issue, it made eight sales of harvested grain. Some of the raw materials, consumables and supplies used for cultivation, such as seed, fertiliser and fuel, had already been purchased in autumn 2022. Input VAT totalling EUR 10,091.32 was statutorily excluded from deduction in 2022. For 2023, the applicant sought an input VAT adjustment under Section 15a UStG in respect of the input VAT incurred in 2022.

The tax office partially denied the adjustment by reference to the de minimis threshold under Section 44(1) UStDV, namely EUR 1,000 of input VAT per asset. Based on the allocation made to the individual grain sales, this resulted in the denial of input VAT adjustments totalling EUR 1,140. The applicant argued that, in the event of a change in the taxation method, the de minimis threshold under Section 44(1) UStDV was not applicable to current assets because it had no basis in EU law. The tax office considered the denial of the adjustment lawful where the EUR 1,000 threshold was not exceeded for each individual asset.

Grounds for the Decision

The Munich Fiscal Court stayed the proceedings and referred to the CJEU under Article 267(3) TFEU the question whether the partial exclusion of an input VAT adjustment under Section 44(1) UStDV following a change in the taxation method infringes Article 192, read in conjunction with Articles 184 and 185(1), of the VAT Directive.

The right to deduct input VAT and the related adjustment mechanism under Articles 184 to 186 of the VAT Directive are intended to relieve taxable persons fully of VAT and ensure fiscal neutrality.

In the Court's view, the input VAT deduction must be aligned as precisely as possible with the actual use. Although Article 192 of the VAT Directive permits Member States to take measures to prevent unjustified advantages or disadvantages when the taxation system changes, Member States have no discretion where the change gives rise to inaccuracies that conflict with the principle of neutrality.

The power granted to Member States by Article 186 of the VAT Directive to lay down detailed rules for applying the adjustment mechanism does not cover a substantive exclusion of that mechanism. The de minimis threshold under Section 44(1) UStDV does not simplify administration because, in individual cases, it first requires a complex allocation of input transactions to individual assets or output transactions. Furthermore, the allocation also captures cases in which the input transactions acquired before the change in the taxation method are substantial in aggregate.

Even if the special provisions governing capital goods were applicable to current assets, Article 189(d) of the VAT Directive would not justify a complete exclusion of an adjustment.

Please note:

The reference may have significant implications for all cases in which the de minimis threshold under Section 44 UStDV is relevant to an input VAT adjustment under Section 15a UStG, for example following a change from flat-rate taxation under Section 24 UStG or from the small-business exemption under Section 19 UStG to taxation under the general VAT rules.

Pending the CJEU's decision, businesses should maintain detailed documentation of the links between input and output transactions. This may enable them subsequently to enforce a full adjustment if the General Court follows the Munich Fiscal Court's view.

15 | Estimation of VAT Incorrectly Shown on Invoices Issued to Final Consumers

Berlin-Brandenburg Fiscal Court, Judgment of 25 June 2026 – 2 K 2046/25

This judgment of the Berlin-Brandenburg Fiscal Court concerns the tax treatment of VAT incorrectly shown by a catering business. The applicant had shown the standard VAT rate on its till receipts even though a reduced rate applied to food, whereupon the tax office demanded payment of the difference under Section 14c German VAT Act (UStG).

Facts of the Case

In the years at issue, 2021 and 2022, the applicant operated a Middle Eastern restaurant with a shisha bar. According to its website, the premises also included a nightclub and a shisha lounge. Separate rooms could be booked for private events, for which the applicant issued separate invoices individually identifying the respective customer by name.

In its ordinary business operations, the applicant issued anonymous till receipts to its guests. Although those receipts contained the information required for simplified invoices under Section 33, nos. 1 to 4 German VAT Implementing Regulation (UStDV), they

did not state the customer's name. During a special VAT audit, the auditor evaluated the till Z-reports and found that, despite the statutory reduction of the VAT rate from 19% to 7% for restaurant and catering services, except for the supply of beverages, the applicant had consistently shown the standard rate of 19% on the till receipts issued to its guests during the period at issue. In its accounts, however, the applicant recorded those supplies as transactions subject to the reduced rate of 7%. The auditor considered this to constitute VAT incorrectly shown under Section 14c UStG and assessed additional VAT. After its administrative appeal was unsuccessful, the applicant challenged the assessment before the Fiscal Court.

The applicant argued that it served mainly private final consumers, who were in practice not entitled to deduct input VAT, meaning that there was no risk of loss of tax revenue. Section 14c UStG was therefore not applicable.



Grounds for the Decision

The Court held that the amended VAT assessments were only partially lawful.

Under Section 14c(1), sentence 1 UStG, a taxable person owes the excess amount incorrectly shown where an invoice states an amount of VAT higher than that legally due. On its till receipts for food, the applicant had incorrectly and consistently shown the standard rate of 19%, although the reduced rate of 7% applied during the period at issue under Section 12(2), no. 15 UStG.

A document does not need to contain all mandatory statutory particulars in order to constitute an “invoice” for the purposes of Section 14c UStG. It is sufficient if the document contains information identifying the issuer of the invoice, the purported customer, the description of the supply, the consideration and the VAT shown separately. Those five minimum particulars are sufficient to create an abstract risk that an unjustified input VAT deduction may be claimed.

The Court divided the anonymous till receipts into two categories. Where the gross amount exceeded EUR 250, the simplifications for low-value invoices under Section 33 UStDV did not apply. As those receipts did not identify a customer, they lacked a mandatory minimum particular required for a regular invoice within the meaning of Section 14c UStG. In the absence of an “invoice,” Section 14c UStG did not apply to those receipts.

Low-value invoices under Section 33 UStDV are not legally required to identify the customer. However, since they generally entitle the recipient to deduct input VAT under Section 35(1) UStDV, they create an abstract risk to tax revenue. Despite being anonymous, they must therefore be classified as “invoices” within the meaning of Section 14c UStG.

The applicant had submitted receipts exceeding EUR 250, including subsequently corrected receipts for EUR 850, EUR 1,146 and EUR 1,691.50. As the items on the till receipts were often illegible or could not clearly be allocated to food or beverages, the Court estimated the proportion attributable to food under Section 96 German Fiscal Court Code (FGO), read in conjunction with Section 162 German Fiscal Code (AO). Based on a sample of clearly legible receipts, the Court applied a practicable ratio of one third food to two thirds beverages. Those amounts were to be deducted directly from the original VAT liability under Section 14c UStG.

For the remaining receipts not exceeding EUR 250, namely low-value invoices, the Court examined whether there was a risk of loss of tax revenue. According to settled CJEU and German Federal Fiscal Court case law, there is no risk of loss of tax revenue where VAT is incorrectly shown to a final consumer who is not entitled to deduct input VAT. Section 14c UStG does not apply in those circumstances.

As the receipts were anonymous, the status of the guests could not be verified directly. The Court rejected the applicant’s assertion that visits by business customers to a shisha bar were entirely inconceivable. Depending on the type of business and cultural background, business meals could take place at such an establishment. Since the precise group of recipients of anonymous low-value invoices could not be determined, the proportion of invoices posing a risk to tax revenue had to be estimated on the basis of an overall assessment under Section 162 AO.

The Court emphasised that the stricter view of the tax authorities, set out in the German Ministry of Finance guidance dated 27 February 2024 and according to which Section 14c UStG always applies in full to anonymous receipts, had been superseded by the CJEU judgment of 1 August 2025 in Finanzamt Österreich II (C-794/23) and was, in any event, not binding on the Court. In the applicant’s favour, the Court took into account that the shisha and entertainment offering, as well as its advertising, was clearly directed at private leisure activities and that larger corporate events were invoiced separately with the customer identified by name. Since business meetings could not be entirely ruled out, however, the Court considered an estimated proportion of 20% of visits for business purposes to be appropriate. Only that 20% proportion continued to pose a risk of loss of tax revenue and therefore gave rise to VAT liability under Section 14c UStG.

Please note:

Where incorrect low-value invoices do not identify the customer and it is therefore impossible to determine whether the invoices were issued to a taxable person or a non-taxable person, the Berlin-Brandenburg Fiscal Court considers that the proportion of invoices for which a risk of loss of tax revenue can be ruled out may be estimated.

In its judgment of 26 March 2026 (V R 46/25), the German Federal Fiscal Court already indicated that, in light of the CJEU's case law, it no longer adheres to the view that VAT liability under Section 14c(1) UStG also arises where an invoice is issued to a final consumer. According to the German Federal Fiscal Court's judgment of 9 July 2025 (XI R 25/23), when assessing incorrectly invoiced VAT under Section 14c(1) UStG, it must also be examined whether there is a risk of loss of tax revenue.

According to the Cologne Fiscal Court (judgment of 13 May 2026, 9 K 1890/23, not yet published; appeal by the tax office pending before the German Federal Fiscal Court under case V R 27/26), there is likewise no risk of loss of tax revenue where an incorrect final invoice was issued because VAT shown on advance-payment invoices was not deducted, provided that the customer claimed only the correct amount of input VAT.

Events

NEW – Our VAT News Talk

Following the successful launch on 23 April 2026, Rainer Weymüller, former Presiding Judge at the Munich Fiscal Court and Of Counsel at KPMG, and Dr. Oliver Buttenhauser, Partner at KPMG, will continue to provide further insights into the topics covered in this newsletter and discuss their practical implications together with participants.

Please save the following dates:

19 November 2026

18 February 2027

(11:00 a.m. – 12:00 p.m. CET in each case)

You can register directly here:

<https://www.events.kpmg.de/vat-news-talk>

TaxNewsFlash Indirect Tax

KPMG articles on indirect taxes from around the world

You can find the following and other articles [here](#).

30 September – Estonia

Retroactive registration of VAT taxable person upheld; prior communications did not rise to level of an audit (Circuit Court decisions)

29 September – Africa:

Overview of recent tax developments (September 2026)

29 September – Colombia:

Temporary tax incentives to support investment in earthquake-affected regions

28 September – Poland

Absence of accounting depreciation does not preclude tax depreciation (Supreme Administrative Court decision); other tax developments

28 September – Serbia

Amendments to e-invoicing adopted by Parliament

25 September – Denmark

Deferred launch of voluntary e-invoicing to March 1, 2027



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