

KMLZ VAT NEWSLETTER

No tax fraud when a tax payer realizes he has been part of a VAT fraud carousel after having purchased goods

The defendant (A) was acting as a so-called “buffer” in a VAT fraud carousel in which flatscreen TVs were sold among the participants multiple times. A was accused of having deducted VAT concerning the purchase of the flatscreen TVs “in bad faith”. The distinguishing element in this case was that A became aware of the VAT fraud carousel after having purchased the flatscreen TVs: So in these cases, A was acting in good faith at the time he purchased the flatscreen TVs and only subsequently obtained knowledge of the VAT fraud carousel, at a time prior to submitting his VAT returns.

Right to deduct VAT does not cease to apply retroactively

According to a decision of the Federal Court of Justice, the right to deduct VAT arises at the time the taxable supply is carried out. As a consequence, the right to deduct VAT does not cease to apply retroactively if the taxable person purchases goods “in good faith” and only afterwards realizes that these transactions were part of a VAT fraud carousel. There is also no obligation to correct the submitted VAT returns in this case. The Federal Court of Justice’s decision increases legal certainty for taxable persons and consultants (decision of the Federal Court of Justice of 1 October 2013, 1 StR 312/13, see also decision of the Federal Court of Justice of 5 February 2013, 1 StR 422/13).

The Federal Court of Justice has decided as follows: The right to deduct VAT arises at the time the taxable supply is carried out. The right to deduct VAT is to be denied if the taxable person knew or should have known that, by making his purchase, he was participating in a VAT fraud carousel. However, the right to deduct VAT does not cease to apply retroactively if the taxable person purchases goods “in good faith” and only afterwards realizes that these transactions were part of a VAT fraud carousel. There is also no obligation to correct the submitted VAT returns in this case (decision of the Federal Court of Justice of 1 October 2013, 1 StR 312/13).