



German Federal Fiscal Court restricts input VAT deduction for luxury cars

04 | 2023

1 Background

Emotions regularly run high in tax audits when the input VAT deduction from the purchase and running costs of company vehicles is not permitted. In the case of so-called luxury cars, the tax authorities regularly doubt the appropriateness with the consequence that the input VAT deduction from acquisition and maintenance is denied. The basis for this is the income tax prohibition of deduction of business expenses for unreasonable costs pertaining to private living or entertainment according to sec. 4 para. 5 sentence 1 no. 4, 7 German Income Tax Act (EStG). For such expenses, the deduction of input VAT is excluded pursuant to sec. 15 para. 1a German VAT Act.

Following acquisition, particularly rare and valuable vehicles are often left unregistered in storage facilities with a view to being subsequently sold at a substantial profit. If the main purpose of the business concerned is not car trading, the tax authorities regularly deny the existence of an economic activity in these cases and refuse the input VAT deduction. Tax courts, on the other hand, have recently come out in favour of allowing such input VAT deductions.

2 Facts of the two cases

In the two decisions, in which the findings were essentially identical, taxable persons purchased high-priced vehicles as investments. These vehicles were left locked, covered, unregistered and were parked in a storage facility. The main purpose of the respective companies was trading in scrap metal and management and liability services as the unlimited partner of a limited partnership (KG). The tax authorities denied the input VAT deduction from the purchase since there was no economic activity and, moreover, unreasonable expenditure. The subsequent legal proceedings were conducted



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before the Baden-Württemberg Fiscal Court. In both cases, the allocation to the plaintiffs' taxable activity and the right to deduct input VAT were affirmed. The Court found that if the status as taxable person already existed for other reasons, this also covers sporadic activities, such as the car acquisitions in dispute, as investments with the aim of a later sale. In this respect, the intention to generate income at the time of acquisition was sufficient. Accordingly, it was not necessary to maintain business premises or to regularly place advertisements for sale. The tax authorities appealed these two decisions.

3 Decisions of the German Federal Fiscal Court (V R 26/21 and V R 27/21)

The Court sided with the tax authorities and ruled that the input VAT deductions could not be made because the claimants were not taxable persons in terms of the investments. Sec. 15 para 1 sentence 1 no. 1 sentence 1 German VAT Act is to be interpreted under EU law in such a way that an input VAT deduction requires the use of the acquired supply for the purposes of the entrepreneur's taxable turnover. This requires that the transactions be carried out in the context of an economic activity within the meaning of Art. 9 para 1 of the VAT Directive. According to Art. 9 para 1 subpara 2 sentence 2 of the VAT Directive, an economic activity is, in particular, the use of an asset for the sustainable generation of turnover. The mere purchase and sale of an object is not a corresponding use, since the only consideration is the subsequent earnings from the sale. If an asset can be used economically and privately, the actual use has to be examined in order to determine whether it is really being used for the sustained generation of turnover. In the Court's view, the storage of unregistered vehicles spoke in favour of their classification as collectors' items. Car collectors are generally not taxable persons. This might be different if the acquirer acted as a taxable person at the time of acquisition.

The car acquisitions were also not so-called auxiliary transactions. It is accepted that businesses are also taxable persons for any other occasional economic activity. However, this only applies if this activity itself constitutes an economic activity within the meaning of the second subparagraph of Art. 9 para 1 of the VAT Directive. Furthermore, the acquisition of vehicles was found not to constitute a direct, permanent and necessary extension of the original economic activity.

4 Consequences for the practice

The Federal Fiscal Court specifies and tightens the requirements for the occasional turnover belonging to a taxable activity. In principle, the taxable activity comprises the entire economic activity. Sec. 2 para 1 sentence 3 German VAT Act does not require each activity to be permanent. This also corresponds to the previous view of the tax authorities in sec. 2.7 para 2 sentences 1-3 of the German Administrative VAT Guidelines. According to this, auxiliary transactions fall within the taxable sphere and include all activities that the main activity entails, without permanency being a factor. When the main activity "entails" something additional, this must henceforth be interpreted more narrowly:

- Occasional activities only fall within the scope of the taxable activity and entitle the taxable person to deduct input VAT if they directly, permanently and necessarily extend the main taxable activity.
- Auxiliary transactions must also constitute an economic activity within the meaning of Art. 9 para 1 second subparagraph VAT Directive when viewed in isolation. The behavior must differ from that of a private individual.

The German Federal Fiscal Court leaves unanswered the question of when exactly occasional transactions directly, permanently and necessarily extend the main taxable activity. In practice, constellations are certainly conceivable here that lead to an allocation to the taxable sphere and enable the input VAT deduction. In similar cases, taxable persons must establish an economic connection to the main business activity in order to secure the input VAT deduction. It must be possible to prove that the sporadic purchase differs from a private purchase.