



Federal Ministry of Finance: When is VAT chargeable on partial supplies and instalment payments?

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1 Background

In its judgment of 1 February 2022, V R 37/21 (V R 16/19) the German Federal Fiscal Court (BFH) clarified its jurisprudence on the chargeability of VAT in the case of instalment payments and commented on questions regarding the concept of partial supplies. The German Federal Ministry of Finance (BMF) accepts the BFH's jurisprudence and amends the German Administrative VAT Guidelines by means of its letter dated 14 December 2022.

2 Facts of the BFH case

The circumstances that gave rise to the BFH case involved the plaintiff carrying out the supply of an intermediary service pursuant to a sale of land in 2012. The agreement was that the plaintiff would receive its fee of EUR 1,000,000 plus VAT in five annual instalments of EUR 200,000 plus VAT. The plaintiff paid the VAT to the tax authorities annually, in each case, upon receipt of the instalment. The tax office, however, was of the opinion that the entire VAT should have been paid in 2012. The Fiscal Court, for the most part, upheld the legal action. The plaintiff had already carried out the supplies of intermediary services in 2012. However, with the exception of the first amount received in the following year, remaining amounts were uncollectible due to non-payment.

The BFH referred the case to the ECJ in a preliminary ruling procedure (C-324/20, see KMLZ VAT Newsletter 38 | 2021). The ECJ ruled that the VAT for a one-off supply of services paid for in instalments is chargeable at the time the supply is rendered. According to the ECJ, there is also no uncollectibility. Payment by instalment does not equate to a case of uncollectibility.



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3 Decision of the BFH

The BFH overturned the judgment and referred the case back to the Fiscal Court. Furthermore, it followed the ECJ's opinion. An instance of uncollectibility is not given merely due to the existence of an instalment agreement. What makes a difference is whether an instalment is regarded as not being due before the payment date or whether the recipient only partially fulfilled a claim for remuneration. A restriction, according to which the taxable person is only required to pay VAT on claims for remuneration that are already due, is out of the question.

At the same time, the BFH clarifies that a partial supply, within the meaning of the German VAT Act, requires a supply of a continuous or recurring nature. In the BFH's view, the national concept of a partial supply corresponds to the concepts laid down in Art. 64 para. 1 of the EU VAT Directive. The BFH justifies this on the fact that the examples cited by the ECJ in its decision (e.g. lease of a vehicle within the framework of obligations of a continuous nature) are also to be regarded as partial supplies under national law. According to the BFH, this clarification removes the doubts concerning the correct implementation of Art. 64 para. 1 of the EU VAT Directive by the national concept of partial supplies, which had previously arisen following the ECJ judgment *baumgarten sports* (see KMLZ VAT Newsletter 38 | 2021 and 36 | 2019).

4 BMF's letter of 14 December 2022

In its letter of 14 December 2022, the BMF responds to the current jurisprudence of both the BFH and the ECJ. With reference to the BFH's decision, it adds that the chargeability of VAT, in accordance with sec. 13 para. 1 no. 1 lit. a sentence 1 of the German VAT Act, is not limited to claims for remuneration that are already due. With regard to partial supplies, the regulation is amended to the effect that a partial supply, within the meaning of sec. 13 para. 1 no. 1 lit. a sentence 3 of the German VAT Act, requires a supply of a continuous or recurring nature and that no partial supply exists if it is a one-off supply against payment by instalments. In addition, the BMF clarifies that an instalment payment agreement does not constitute grounds for uncollectibility within the meaning of sec. 17 para. 2 no. 1 of the German VAT Act. The regulations laid down in the BMF's letter are to be applied to all open cases.

5 Consequences for the practice

The BMF's letter on the incurrence of VAT in the case of partial supplies and instalment payments creates legal certainty for taxable persons by following the opinion of both the ECJ (C-324/20) and the BFH. Particularly after the ECJ decision, it initially remained unclear in which cases of a supply of services, remunerated by means of successive payments, an immediate full incurrence of VAT was to be assumed. Unfortunately, the BMF's letter does not deal with the ECJ judgment *baumgarten sports*. In circumstances of similar constellations, Union law (contrary to the BMF) offers further scope of discretion.

Taxable persons who intend to conclude instalment payment agreements should check in advance whether the facts can be structured in such a way that partial supplies are given. In doing so, the VAT does not have to be pre-financed vis-à-vis the tax office prior to receipt of the VAT by the recipient.

If partial supplies are not given, taxable persons should issue an invoice showing VAT for the fully agreed amount at the time the supply is rendered. If the recipient is entitled to deduct input VAT, he is then immediately entitled to the full input VAT deduction. If the recipient is not entitled to deduct input VAT in full, this approach is also permissible under VAT law. The recommendations outlined in our KMLZ Newsletter 38 | 2021 continue to apply even after the BMF's letter.