



Input VAT Deduction for Intra-Community Acquisitions and Services – Tense Relaxation

1 Background

German taxable persons can relax when it comes to input VAT deduction on intra-Community acquisitions and services. If used for deductible supplies, the VAT due can be deducted as input VAT. There are no formal requirements. Not even an invoice is required (cf. sec. 15(1) No. 3 and 4 of the German VAT Act). However, caution should be used when applying this 'understanding' to other EU Member States' VAT provisions, as some of them impose additional requirements for input VAT deduction. Violations are often subject to sanctions. Interest may be charged on the VAT and, in the worst case, input VAT deduction may be denied. On 18 March 2021, the ECJ ruled on a Polish regulation (Case C-895/19).

2 Facts

Under Polish law, input VAT from intra-Community acquisitions and services may also be deducted in the same reporting period in which the VAT was incurred. In this respect, the intra-Community transactions are VAT-neutral. Until 2016, this also applied to late reporting (cf. article 86(10) and (13a) of the Polish VAT Act (PTU), former version). Since 2017, however, a restriction has applied to late reporting. While VAT amounts must be considered in the reporting period in which they are incurred, this applies to input VAT deduction only to a limited extent. Retroactive input VAT deduction is only permitted within three months of the reporting period in which the VAT is incurred. If the deadline has passed, input VAT deduction can no longer be claimed retroactively, but can instead only be claimed for the current reporting period (cf. article 86(10i) of the PTU). For the reporting period in which the acquisition VAT was incurred, there is an additional payment amount subject to interest.



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A Polish taxable person (A) applied for a VAT ruling. In its opinion, the new Polish provision did not apply to intra-Community acquisitions if the late reporting was due to the supplier's late invoicing or minor mistakes made on A's part. The Polish tax authorities rejected A's application. The Polish court referred the question to the ECJ.

3 ECJ judgement

The ECJ held that the Polish provision infringes the EU VAT Directive for two reasons. The first reason is technical. In the case of late reporting, the provision postpones the accrual of the right to input VAT deduction (and not only the time at which it can be exercised). The VAT Directive does not provide for such a postponement (recital 45). The second reason is the generality of the provision. The postponement of the input VAT deduction does not consider the circumstances of the individual case. According to the ECJ's established case law, purely formal infringements may not limit input VAT deduction per se (recital 46). The latter applies particularly if the tax authorities have all of the relevant information available for checking the input VAT deduction. For this not to be the case, the formal infringement must act to prevent reliable proof of the requirements (recital 47). However, the ECJ explicitly declares that EU Member States are permitted to sanction formal infringements by other means, such as fines (recital 53).

4 Consequences for the Practice

The judgment is likely to have a broad impact. (1) Although it concerns the deduction of input VAT on intra-Community acquisitions, it should also apply to intra-Community services. (2) Non-Polish taxable persons are also likely to benefit from the judgment. As a result of its lower labour costs, Poland is an important contract processing country. Many taxable persons realise intra-Community acquisitions in Poland by receiving preliminary products directly transported to Poland or by transferring them there for contract processing. The same applies to online traders who have their shipping logistics handled via Poland. (3) Finally, other EU Member States also have comparable or even stricter provisions.

It is currently unclear how the Polish legislator will react. It is not compelled to abolish the provision but could instead take steps to insert a case-by-case clause. In addition, it could take up the ECJ's suggestion and sanction infringements by other means. The same applies to the provisions in other EU member states. Even if these provisions contradict the VAT Directive and the ECJ case law, they do not automatically cease to apply. In case of doubt, affected taxable persons would first need to enforce their rights (in court), and be prepared to bear the potentially significant legal costs, as well as the risk of losing.

Whether taxable persons, who are confronted with the issue in Poland or in other EU Member States, can benefit from the judgment depends on the individual case. The decisive factors are the status of the proceedings, the amount involved and other relevant circumstances, such as the reprehensibility of a possible breach of duty. Even if the hand is better now, it still needs to be played well.

Moreover, taxable persons should not neglect the correct reporting of intra-Community acquisitions and services. This applies both domestically and, in particular, if they are realised abroad. Under no circumstances should taxable persons be under the illusion that intra-Community acquisitions and transactions under reverse charge are safe because the VAT due and input VAT balance each other out. The opposite is the case, even if the ECJ's judgement initially reduces the associated risk factors in Poland.