



KMLZ VAT NEWSLETTER

Federal Fiscal Court upheld on time limits for input VAT deduction

1. Background

At first glance, the decision of the Federal Fiscal Court is surprising. In the first instance decision of the tax court Hamburg, the significant question was not the point in time of input VAT deduction but rather, whether a warehouse keeper is entitled to claim input VAT deduction regarding owed import VAT in circumstances where he had no right to dispose of the relevant goods. Basically, import VAT is solely refundable if the goods are imported on behalf of the taxable person claiming the VAT deduction. According to the German tax authorities, this requirement is met if the taxable person has the right to dispose of the respective goods. Consequently, commission agents, lessees, third parties commissioned with the customs procedure, e. g. freight forwarder, and warehouse keepers are not entitled to deduct input VAT.

2. Decision of the Federal Fiscal Court

In the case at hand, this question was not of significance as regards the Federal Fiscal Court's decision. It was not even mentioned.

Time limits for input VAT deduction

The Federal Fiscal Court has confirmed its established case law on the time limits for input VAT deduction (decision of 13 February 2014, V R 8/13). According to this decision, a taxable person must claim input VAT for the period in which the requirements for input VAT deduction are fulfilled. A claim made in a later period is not permitted. Where appropriate, the taxable person has to file an amended VAT return. Contrary to expectations, the Federal Tax Court has not yet decided whether a taxable person is entitled to recover import VAT in certain cases, without having the right to dispose of the goods.

Rather, the Federal Fiscal Court confirmed a decision of the 11th chamber regarding time limits for input VAT deduction (decision of 1 December 2010, XI R 28/08). The German tax authorities have previously demonstrated that they share this opinion (see section 15.2 para. 1 sentence 7 German VAT Circular).

Initially, the customs authorities assessed import VAT against the appellant for the fiscal year 2008. However, the appellant claimed the respective input VAT deduction only in the fiscal year 2009.

The Federal Fiscal Court rejected the deduction of input VAT in 2009. The decision is based on the wording of section 16 para. 2 sentence 1 of the German VAT Act. According to the provision, deductible input VAT subject to section 15 of the German VAT Act has to be set off against the VAT liability in the respective period. The provisions of art. 178 and art. 179 of the VAT Directive substantiate the decision.



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As a result, the decision is not solely authoritative with respect to input VAT deduction in terms of import VAT but also with regard to input VAT deduction in general.

3. Consequences in practice

In practice, time limits with regard to input VAT deduction are not unknown. Within the VAT refund procedure, non-registered foreign taxable persons may apply for a refund solely for the year in which the right to deduct arises.

However, to facilitate matters, it is not uncommon to claim input VAT in the current VAT period even if the requirements have already been met in a prior period. This is not without risk, although it is usually not challenge by tax auditors. The input VAT deduction would have to be rejected based on a respective assessment by the tax auditor. In general, the enforcement of input VAT deduction is possible by filing an amendment for the appropriate period. However, this depends on whether the tax assessment is materially definitive or not. If the tax assessment is no longer amendable, according to the decision of the Federal

Fiscal Court, the input VAT is no longer deductible. For this reason, and to avoid further consequences, taxable persons are not permitted to deduct input VAT in such cases.

The time limit for input VAT deduction does not affect cases in which invoices charging VAT are received at a later time, e.g. due to a necessary correction of the invoice or because the original has been lost in the post.

In practice, it might be difficult to claim a deduction of import VAT which is paid by third parties and if the third party charges the disbursed import VAT quite late (e.g. because a claim for input VAT deduction by the third party was rejected as it was not entitled to an input VAT deduction due to not having the right to dispose of the goods). According to the opinion of the German tax authorities, it is the time at which the import VAT is incurred, (date of import VAT assessment notification), which is significant for the appropriate VAT period, not its charge. In such cases, there is a high risk that the actual beneficiary, with regard to the input VAT deduction, may no longer apply for the deduction, as the tax assessment for the appropriate period is already definitive.