



German Federal Fiscal Court: Declaration made in a later VAT period – remission of interest

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1 Background

The tax authorities' additional VAT claims are often accompanied, at the expense of the taxable person, by late assessment interest in accordance with sec. 233a of the German Fiscal Code. It is sufficient for interest to accrue if the taxable person declares his supplies in a filing period which is later than required by law. However, in a recent decision (dated 23 February 2023 – V R 30/20), the German Federal Fiscal Court now restricts late assessment interest.

2 Facts of the case

The plaintiff supplied services to customers which he acquired from sub-suppliers before. In the years in dispute, 2009 to 2013, the plaintiff filed monthly VAT returns. The plaintiff declared its supplies for the filing period in which it issued the invoice. Only in about 10% of the cases did the month in which the invoice was issued coincide with the month in which the services were rendered, for which the plaintiff should have declared the supplies. 90% of the plaintiff's supplies were therefore declared and taxed one month late.

A field audit conducted by the tax authorities correctly allocated the time of these late declared supplies by shifting 90% of the supplies to the respective previous month. This was also done year-on-year, as the tax audit determined 90% of the supplies declared for January for December of the previous year. With the correspondingly amended VAT assessments for the years in dispute, the tax office assessed late assessment interest in accordance with sec. 233a of the German Fiscal Code. The tax office had calculated the interest course according to the wording of the law and correspondingly set interest for 56 months (2009), 44 months (2010), 32 months (2011), 20 months (2012) and 8 months (2013). There was probably



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no countervailing interest on a refund for individual tax periods. The plaintiff sought remission of the interest which, to it, seemed disproportionate. Since there was only a deferral of one month in each case, there was no liquidity advantage at the end of the 15-month waiting period in accordance with sec. 223a para. 2 sentence 1 of the German Fiscal Code. In the view of the plaintiff, this justified a complete remission of interest. At the very least, a remission of interest should be granted to the extent that it exceeded 0.5% for one calendar month per interest assessment, as there was a liquidity advantage of only one month in each case. The tax office rejected the application for remission. The fiscal court, on the other hand, ruled that the tax office was obligated to grant remission within the scope of its discretion.

3 German Federal Fiscal Court decision

The German Federal Fiscal Court confirmed the fiscal court's decision. Sec. 233a of the German Fiscal Code is not intended to skim off interest advantages that do not actually exist. In this respect, it is crucial that the liquidity advantage of a VAT return that is one month late is already lost with the payment of the VAT declared for the following month. The shifts of supplies neutralise each other. The additional VAT claims for December 2009 were offset by the VAT refund for January 2010. The fact that there may not be an actual VAT refund for January 2010 does not prevent the finding that this compensation occurred. It is irrelevant that the supplies now correctly shifted from January to December were compensated by supplies correctly shifted from February to January. The remission of late assessment interest is also not precluded by the fact that there had been several successive shifts of supplies, across years. Secs. 163 and 227 of the German Fiscal Code grant discretion on the part of the tax office. However, according to the purpose of the interest rule, the discretion is to be exercised to the effect that a remission of interest is to be granted, at least to the extent that there was no liquidity advantage found to exist. The German Federal Fiscal Court, however, allows for use of the scope of discretion towards a further remission of interest. Thus, the tax office could also grant a complete remission of interest, despite a one-month liquidity advantage, if there is no longer any liquidity advantage at the end of the 15-month waiting period according to sec. 233a para. 2 sentence 1 of the German Fiscal Code.

4 Consequences for the practice

In practice, VAT declarations made in a later period than required occur very often. Taxable persons who are therefore burdened with interest on arrears should think about a request for remission of interest in accordance with secs. 163, 227 of the German Fiscal Code. The German Federal Fiscal Court's decision provides the following crucial findings for the practice:

- Late assessment interest, in accordance with sec. 233a of the German Fiscal Code, may only be charged for periods in which the taxable person actually received a liquidity advantage.
- For periods for which the taxable person did not receive a liquidity advantage, but for which interest nevertheless accrued in accordance with sec. 233a of the German Fiscal Code, remission must be granted.
- In a previous decision (dated 11 July 1996 – V R 18/95), the German Federal Fiscal Court already confirmed a remission of interest in the case of a singular declaration in a later period. It is now clear that this must also apply in cases in which declarations are constantly being made in a later period, over many months or years.
- However, the German Federal Fiscal Court has not ruled on a situation in which, in addition to late assessment interest for one tax period, interest on refunds for another tax period have accrued.
- Those taxable persons affected should file a request for remission of interest as early as possible, pursuant to secs. 163 and 227 of the German Fiscal Code. Ideally, this should be done before an interest assessment is issued.