



Correction of VAT liability in accordance with sec 14c para 1 requires repayment of the VAT

1 Facts

The Plaintiff leased out a nursing home to a limited partnership (KG). It treated the lease as VAT-exempt. In addition, the Plaintiff rented furnishings to the KG. The parties agreed a price plus VAT for the furnishings. The Plaintiff treated the rental of the furnishings as subject to VAT and paid the VAT to the tax office. The KG did not deduct input VAT.

The Plaintiff subsequently claimed reimbursement of the VAT from the tax authorities for the rental of the furnishings. The transfer of these objects was an ancillary service to the VAT exempt leasing of the nursing home and was therefore VAT-exempt in accordance with sec 4 No. 12(a) of the German VAT Act. The Plaintiff corrected the settlement showing VAT but did not repay the VAT amount to the KG.

2 Federal Fiscal Court opinion

In the Federal Fiscal Court's view, a correction, in terms of sec 14c para 1 sentence 2 of the German VAT Act, basically requires that, in addition to the invoice correction, the supplier has repaid the over-received VAT amount to the customer. This results from sec 17 of the German VAT Act, to which sec 14c para 1 sentence 2 of the German VAT Act refers. Since the customer has usually already collected the VAT amount from the supplier, he would be unjustifiably enriched if he were to receive a repayment from the tax office. This would be to the disadvantage of the customer. At the same time, the tax authorities would have to fear that the customer, in accordance with the principles of the Reemtsma judgment (ECJ



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judgment of 15.03.2007 – C35/05), would claim the VAT amount from it, which the customer paid to the supplier. Only the repayment by the supplier creates an equitable balance of interests. The supplier would also not be burdened by this. In order to prevent pre-financing, repayment could also be made by way of assignment and offsetting. Union law provides for a corresponding repayment requirement.

3 Conclusion

The Court decision may pose practical challenges for taxable persons. Even if a repayment can basically take place by way of an assignment (see KMLZ Newsletter 06/2017), numerous taxable persons will have to pre-finance the amount to be repaid, as there will not necessarily be an assignable claim in every case. Individual calculation bases of a VAT assessment are not transferable. Further, taxable persons need to ensure that they report a correction of any VAT liability, in accordance with sec 14c of the German VAT Act, to the tax office within the correct reporting period and not too early. This cannot only be based on the date of the invoice correction. The decisive period is when the invoice is corrected as well as the VAT amount is paid back.

This is followed by a series of follow-up questions, a few of which should be highlighted:

The Court confirmed the tax authority's view, according to which the corrections in accordance with sec 14c para 1 sentence 2 of the German VAT Act require a respective repayment (see sec 14c.1 para 5 sentence 4 of the German VAT Circular). This shall, however, only apply in cases where the correction of the invoice leads to a reduction of the invoice amount (see sec 14c.1 para 5 sentence 4; example, sentence 2 of the German VAT Circular). If, despite the correction of the invoice, the total invoice amount remains unchanged, due to a gross agreement having been made, repayment of the wrongfully shown VAT amount is not necessary (see sec 14c.1 para 5, example sentence 4 and 5 of the German VAT Circular). The current decision of the Federal Fiscal Court should not change this. In cases of a VAT liability in accordance with sec 14 c para 2 of the German VAT Act (e.g. no supply of services or VAT shown by a non-taxable person) and its correction, the tax authorities also waive repayment. The distinction of the scope of application of the two paragraphs of sec 14c of the German VAT Act will therefore continue to be of great importance.

If self-billing invoices are issued, the supplier may object to it in accordance with sec 14 para 2 sentence 3 German VAT Act. If a self-billing invoice establishes a VAT liability for the supplier, in accordance with sec 14c German VAT Act, the objection also eliminates this VAT liability (sec 14c.1 para 3 German VAT Circular). In such cases, however, a repayment should be irrelevant as the regulation of the objection does not contain a reference to sec 17 German VAT Act. Additionally, the Court has already decided, that it is not the task of the fiscal jurisdiction to examine questions of civil law.

It is left open to question, whether a repayment obligation also avoids enrichment in cases where the customer has deducted input VAT but the corresponding VAT assessment is definitive and can no longer be changed. Ultimately, this would enrich the customer by virtue of his retaining the input VAT amount while receiving repayment from the supplier.

In addition, repayment is not likely to be necessary if the supplier has shown German VAT incorrectly but owes the VAT in another country and the amounts are set off against.