



Waste disposal that leads to creation of valuable materials – not necessarily a barter transaction

1 Background

The tax authorities assume a barter transaction (disposal service in return for a supply of waste) if the waste provided for disposal has an economic value (so-called valuable waste) and, according to the consensus of the contracting parties, the waste provided has influenced the amount of the cash remuneration for the disposal service or the acquired disposal has influenced the cash remuneration for the supply of goods (sec. 3.16 para. 1 and sec. 10.5 para. 2 of the German Administrative VAT Guidelines). In its judgement of 18 April 2024 - V R 7/22, the German Federal Fiscal Court ruled that waste disposal that leads to the creation of valuable materials does not necessarily constitute a barter transaction.

2 Facts

The plaintiff is a waste disposal company. It took contaminated chemicals from its customers for the purpose of disposal in accordance with the recycling process listed in Annex 2 of the Kreislaufwirtschaftsgesetz (Closed Substance Cycle Waste Management Act). The chemical process undertaken removed and disposed of the impurities in the chemical waste. The utilisation of the waste produced substances that had an economic value and were sold by the waste disposal company for consideration. The tax office and the Fiscal Court assumed that there was a barter transaction. In addition to the agreed disposal price, the plaintiff received a supply of goods as remuneration for its disposal service. The object of the supply was the contaminated chemicals that the plaintiff received from its customers. Therefore, the value of the contaminated chemicals increased the taxable amount for the disposal service provided by the plaintiff.



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3 German federal fiscal court decision

In its judgement of 18 April 2024 - V R 7/22, which was only published at the end of August, the German Federal Fiscal Court ruled that the taxable person had only provided a waste disposal service. The assumption of a barter transaction was out of the question due to the lack of a supply of goods to the taxable person. For a supply of goods for consideration, the waste as such must have a value at the time of transfer, which was not the case here. The legal relationship between the supplier and the recipient underlying the provision of the service was exclusively aimed at the provision of a waste disposal service, and not also at a supply of goods to the plaintiff. In this context, the handover of the contaminated chemicals was merely a subordinate act for the receipt of the waste disposal service, as it was necessary in order to enable the waste disposal service to be carried out.

This was not changed by the fact that the taxable person took into account a possible seller price of substances that he could obtain and resell by later recycling the hazardous waste at a discount in favour of the customer.

The German Federal Fiscal Court also denied the existence of a supply of goods of purified chemicals to the waste disposal company, due to the lack of any power of disposal. The production of chemicals, as part of the waste disposal process, was solely attributable to the waste disposal company. The German Federal Fiscal Court did not attach any significant importance to the fact that the waste disposal company was, subsequent to their processing, able to produce saleable, purified chemicals from the contaminated chemicals.

4 Consequences for the practice

This judgement should be distinguished from other judgements of the German Federal Fiscal Court and the ECJ. In its judgement of 10 January 2019 - C - 410/17, the ECJ decided, for example, that scrap metal and furniture were each to be regarded as remuneration for a waste disposal service because both were directly reusable. It is therefore necessary to delimit the facts of each individual case. In its recent judgement, the German Federal Fiscal Court makes it clear that no barter transaction can be assumed if the waste provided is not a marketable commodity, but instead requires complex reprocessing in order to obtain saleable materials. The current view of the tax authorities leads to a significantly broader interpretation of barter transactions. It remains to be seen whether the tax authorities will adopt the Federal Fiscal Court's differentiated view.

The German Federal Fiscal Court's judgement is not only relevant for specialised waste management companies, but also for recycling companies. Taxable persons in the relevant sectors are advised to review their processes with regard to their (non-)taxability.