



Supply of electricity as an independent supply in the case of property rental

1 Background

Landlords regularly provide further supplies in addition to the actual property rental. The tax authorities classify a landlord's energy supply as an ancillary supply to the rental (sec. 4.12.1 para. 5 sentence 3 of the Administrative VAT Guidelines). Therefore, from a VAT perspective, these supplies share the same VAT treatment as the rental. However, in a different decision made on 16 April 2015, the ECJ ruled that a landlord's energy supply should, in principle, be assessed independently (see [VAT Newsletter 14 | 2015](#)). As a result, the Federal Fiscal Court was required to clarify (judgment of 17 July 2024 – XI R 8/21) the correctness of the tax authorities' view. In this context, the question arises as to whether the purchase of a photovoltaic system, for which the landlord claims input VAT deduction, can be attributed to the electricity supply (separate from the property rental) or to the property rental. The Federal Fiscal Court recently ruled (see [VAT Newsletter 09 | 2024](#)) that input VAT deduction is not available for a heating system for heat supply.

2 Facts of the case

The claimant leased out apartments, VAT-exempt. He installed PV systems on the rental properties and supplied the electricity generated by the PV systems to the tenants at standard market prices. He ensured that each tenant was billed individually by using meters for each tenant. With regard to the supply of electricity, the landlord concluded a supplementary agreement to the lease agreement with the tenants. This provided a right of termination that was independent of the lease agreement. If the additional agreement was terminated, the tenants had to obtain electricity from elsewhere and bear the costs of the necessary conversion work. The plaintiff claimed the input VAT from the costs of the PV system. The tax office was under the impression that the supply of electricity was a dependent ancillary supply to the rental of the living space and therefore denied the input VAT deduction from the costs of the PV system.



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3 German Federal Fiscal Court decision

The Federal Fiscal Court ruled that the supply of tenant electricity in question is an independent taxable supply and that the input VAT deduction from the purchases in connection with the supply of electricity is therefore lawful. First of all, the Federal Fiscal Court demonstrates in a textbook manner the qualification of a uniform supply or several independent supplies. It then follows the ECJ in addressing two fundamental case scenarios in the rental of real estate. On the one hand, the tenant may have the option of freely choosing the suppliers and/or the terms of use of certain supplies. In this case, there would be independent supplies in addition to the rental. This applies in particular if the tenant can determine the consumption themselves. On the other hand, the tenant may not have the option of choosing certain supplies, which would indicate a uniform supply. Accordingly, the supplies of tenant electricity in dispute are independent supplies subject to VAT. The Federal Fiscal Court emphasises that there is a statutory prohibition of coupling with the rental for electricity supplies (sec. 42a para. 2 of the Energy Industry Act). Therefore the tenant is free to choose the electricity supplier, his consumption is billed individually and the termination options for the electricity supply differ from those of the rental agreement. The obligation to bear the costs of necessary conversion measures when changing electricity providers does not lead to a different result. This does not mean that it is factually impossible to exercise the right to choose. Ultimately, the result is in line with the principle of neutrality. The supplier of tenant electricity competes with other electricity providers who can only offer electricity as their main supply subject to VAT.

The Federal Fiscal Court then distinguishes this decision from one of his earlier decisions, according to which the landlord's costs for installing a new heating system are directly and immediately related to the VAT-exempt letting if they are not operating costs that the tenant is required to bear separately (see [VAT Newsletter 09 | 2024](#)). Although the landlord of residential property is responsible for the supply of heat and hot water for the contractual use, according to the Energy Industry Act this does not apply to the supply of electricity. Therefore, the landlord is entitled to deduct input VAT from the supplies received, which are directly and immediately related to the taxable supply of electricity.

4 Consequences for the practice

The Federal Fiscal Court's decision is of practical significance. The Federal Fiscal Court explicitly deviates from the tax authorities' view. However, it remains to be seen how far-reaching this decision will be (electricity, water, etc.). Since the administrative order continues to apply for the time being, the decision does not result in any acute need for action on the part of landlords. With reference to sec. 4.12.1 para. 5 sentence 3 of the Administrative VAT Guidelines, the supply of electricity can, until further notice, be treated as an ancillary supply to property rental. On the other hand, the decision does open up a certain amount of management scope for landlords. It is necessary to check which input VAT potentials can be utilised in accordance with the decision. However, the management scope has been restricted, at least to some extent, since 1 January 2023, in view of the zero VAT rate on supplies of PV systems in accordance with sec. 12 para. 3 no. 1 of the German VAT Act. If, in addition to renting out a property, a landlord intends to supply electricity on an independent basis subject to VAT, the Federal Fiscal Court provides clear guidance that can be used as a reference. Still, it is important to keep an eye on further developments and possible consequences for classic residential tenancies. The other side of the coin is that a landlord is subject to VAT regarding the supply of electricity if his tenant obtains his electricity from the landlord rather than from a separate electricity supplier. In this respect, attention should be paid to the circumstance mentioned by the Federal Fiscal Court that landlords who supply their tenants with electricity may become resellers of electricity if they purchase and continue to supply residual electricity. The reaction of the tax authorities is eagerly awaited.