



In focus: Important decisions in energy tax and electricity tax law

1 Electricity supplier status of large-plants operators

In its ruling of 19 December 2024 (Ref. VII B 27/24), the German Federal Fiscal Court (BFH) commented on the application of the regulation in Section 1a para. 7 of the German Electricity Tax Regulation (StromStV). The BFH may thus call into question the customs administration's previous practice with regard to operators of renewable energy plants with a nominal electrical output of more than 2 MW.

According to Section 1a para. 7 StromStV, Section 1a para. 6 StromStV applies mutatis mutandis to electricity generated in plants with a nominal electrical power of more than 2 MW from wind power, biomass or solar energy. The requirement here is that the person who generates the electricity is also to be regarded as the supplier of the electricity generated and withdrawn for own consumption. For externally sourced, taxed electricity, however, they are considered to be the end consumer. The BFH has clarified that Section 1a para. 7 StromStV contains a legal reference to Section 1a para. 6 StromStV. Therefore, the criteria of Section 1a para. 6 StromStV must also be observed when restricting the supplier status for installations with a nominal electrical power of more than 2 MW, in which electricity is generated from renewable energies. This applies, in particular, to the supply of electricity to end consumers within a customer facility. If these conditions are met, operators of large-scale installations also have 'limited' supplier status with correspondingly lower obligations compared to a 'regular' supplier.

In practice, operators of large-scale installations have also been granted limited supplier status if they do not supply the electricity they generate to end consumers within the customer's facility but instead feed it entirely into the public supply



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grid. This raises the question of whether this practice can be maintained or whether, in such cases, the operator requires a licence as a "regular" supplier with correspondingly more extensive obligations. It remains to be seen whether the customs administration will change its practice. Affected companies should monitor future developments and, if necessary, review their electricity tax status.

2 Electricity supplier status in tenancy agreements

The Mecklenburg-Western Pomerania Fiscal Court has also dealt with the concept of a supplier in electricity tax law, but the context of this case concerned tenancy agreements (Ref. 3 K 164/22). In principle, the person who supplies electricity is the electricity supplier (Section 2 No. 1 of the Electricity Tax Act (StromStG)). However, anyone who exclusively purchases electricity subject to electricity tax under Section 3 StromStG and supplies it exclusively to their tenants, lessees or comparable contractual partners, as end consumers, is not considered a supplier. They are not liable for electricity tax if the electricity is purchased exclusively from another supplier established in the tax territory (Section 1a (2) sentence 1 StromStV). In the opinion of the Fiscal Court, this also applies if the externally sourced electricity is tax exempt (in the specific case pursuant to Section 9(1) No. 3b StromStG). The purchase of tax-exempt electricity does not preclude the exception to the status of supplier in Section 1a para. 2 sentence 1 StromStV. It is sufficient that the tax-exempt electricity is, in principle, subject to the standard tariff under Section 3 StromStG. The structure of the law suggests that classification as a supplier of electricity or end consumer depends only on the tariff to which the electricity is subject, and not on the further question of whether a tax exemption applies. The Fiscal Court thus expressly contradicts differing opinions in the literature. Landlords who supply electricity to their tenants can continue to purchase tax-exempt electricity from third parties (e.g. from PV systems) without becoming suppliers themselves. An appeal against the ruling is pending (VII R 2/25).

3 Energy tax: Tax liability of the authorised storer

The authorised storer (Section 7 para. 4 sentence 2 of the Energy Tax Act (EnergieStG)) becomes liable for tax on the energy products removed from the tax warehouse by him or on his instructions (Section 8 para. 2 sentence 2 EnergieStG). According to the Hamburg Fiscal Court (Ref. 4 K 9/23), the storer also becomes the sole tax debtor if the tax warehouse keeper removes energy products from the tax warehouse for the storer based on a contract concluded with the storer. The tax warehouse keeper then acts as the authorised storer's vicarious agent, with the result that the energy products are removed from the tax warehouse by the storer or at his instigation. In the case in dispute, the storer sold gas oil from the tax warehouse as heating oil. When the gas oil was collected, employees of the customer, together with the manager of the tax warehouse, tampered with the gas oil identification system and were thus able to remove unmarked gas oil from the tax warehouse. The main customs office subsequently imposed energy tax on the storer in the amount of the difference between the tax rate for diesel fuel and the tax rate for heating oil. The storer's action was dismissed by the Hamburg Fiscal Court. The removal of the gas oil from the tax warehouse was carried out at the instigation of the storer. The latter had initiated the action leading to the removal, e.g. by giving instructions or placing orders. The storer's knowledge of the manipulated gas oil identification system was irrelevant. This broad interpretation of 'initiation' increases the tax risk for storers, as they are held fully responsible for the (fraudulent) actions of their agents. Unlike a tax warehouse keeper, the person placing goods in storage does not have the same control and access options due to the lack of direct control over the goods in the tax warehouse. They cannot select or control the tax warehouse keeper's employees. Affected companies should take this into account in their contractual agreements with the tax warehouse keeper and, if necessary, include appropriate compensation clauses.