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UMSATZSTEUER NEWSLETTER

"Retroactive" input VAT deduction, provided the invoice is available at the time the VAT return is filed

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1 Background

It has long been clear that input VAT may only be deducted if a proper invoice is available. The EU VAT Directive distinguishes between the "**arising**" of the right to deduct input VAT – occurring at the same time as the VAT becomes chargeable (usually upon receipt of the supply) – and its "**exercise**." The latter requires that a proper invoice was received. Ten years ago, in the widely noted *Senatex* judgment (case C-518/14), the ECJ held that invoices merely constitute formal conditions for exercising the right of deduction and may be corrected with retroactive effect. Nevertheless, the formal requirements must be met. In *Terra Baubedarf* (case C-152/02), the ECJ held that input VAT may only be deducted in the VAT return period in which the formal requirements are also satisfied. Since then, the practical takeaway has been clear: after receipt of the supply, input VAT is declared only in the VAT return for the period in which the invoice is received by the taxable person.

2 Facts of the case

The case concerns a Polish company which traded in energy. For incoming supplies, the company sometimes only received the relevant supplier invoices in the subsequent VAT reporting period. Under the Polish VAT Act, the right to deduct input VAT – just as in Germany – may only be exercised in the reporting period in which both, the supply was received and the invoice is available. In a ruling request procedure, the company asked whether it could, nevertheless, claim the input VAT deduction for the tax period of the supply, provided that the invoice was available before the VAT return was filed. The tax authority denied this, referring to Polish law. The court of first instance dismissed the action. To exercise the right to deduct input VAT, the transaction must have taken place and the taxable person must be in possession of the invoice. De facto, the right to deduct input VAT, which arises materially with the transaction, would be shifted in time by the formal requirement

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of possessing an invoice. The Supreme Administrative Court doubted whether this temporal deferral of the input VAT deduction was compatible with the principle of neutrality and referred the question to the General Court (GC).

3 Judgment of the General Court

In its judgment of 11 February 2026 (case T-689/24 – *Dyrektor Krajowej Informacji Skarbowej*), the GC first emphasises that the arising of the right to deduct input VAT may be made dependent solely on the substantive conditions laid down in the EU VAT Directive. Accordingly, the right to deduct input VAT arises, under Articles 167 and 168(a) in conjunction with Article 63 of the EU VAT Directive, at the time of the transaction, irrespective of whether the taxable person is in possession of an invoice. If the input VAT deduction may be claimed only in a later tax period because the national rules allow the deduction only for the tax period in which the invoice is also available, this constitutes an additional condition for the arising of the right to deduct input VAT.

Such national legislation is disproportionate and incompatible with the principle of neutrality. The temporal shift leads to the trader being temporarily burdened with VAT even though they are entitled to an immediate deduction. This remains true even in light of the ECJ judgment in *Terra Baubedarf* (case C-152/02). In that case, the claimant did not have any invoice at all at the time it sought to exercise its right of deduction. With reference to the ECJ case law on the retroactive effect of corrected invoices (case C-518/14 – *Senatex*), the GC finally states: if, after correction of an invoice, a taxable person may exercise the right to deduct input VAT for the tax period in which the invoice was originally issued, this must apply a fortiori to a taxable person who has an invoice available when filing the VAT return for the supply period.

4 Consequences for the Practice

Substantive law: The GC makes it clear that the right to deduct input VAT arises with the supply and the chargeability of the tax, and must not depend on possession of an invoice. Any national “forced deferral” violates the principle of fiscal neutrality. In Germany, however, exercising the right is linked to possession of a proper invoice (sec. 15.2 para 2 sentence 5 of the German Administrative VAT Guidelines). The German system is therefore currently being shaken. The input VAT deduction must be allocated to the VAT return period in which the supply was received, provided that the invoice is available by the time the VAT return for that period is filed. This resulting liquidity advantage for businesses, compared with the status quo, is welcome.

Tax criminal law: What remains unchanged is this: Anyone claiming input VAT without possessing the relevant invoice, at the time the VAT return is filed, risks an accusation of tax evasion (sec. 370 of the German General Fiscal Code). The judgment does, however, help in cases of (previously) incorrect allocation to the wrong period. Anyone who allocates incoming invoices to the economically incurred period (receipt of the supply), but only receives the document in a later reporting period, is acting correctly under substantive law. This removes the basis for debates about intent/negligence.

Business processes/accounting: As correct as the judgment may be, it creates practical difficulties. As a rule, the ongoing posting period is closed a few days after month-end. An incoming supply without an invoice can only be recorded manually – an approach that is often prohibited within companies, but is now required for VAT reasons. This is because voluntary postponement to a later period is prohibited (sec. 15.2 para 2 sentence 5 of the German Administrative VAT Guidelines). For implementation, taxpayers now need a “cut-off-capable” workflow: consistent monitoring of invoice receipts up to the filing date, period-appropriate allocation of the incoming supply, and – If the VAT return has already been filed – controlled correction processes in compliance with sec. 153 of the German General Fiscal Code.

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