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VAT'S UP

VAT NEWSLETTER

Court opens the way from the special input VAT refund procedure to the general assessment procedure

40 I 2025

1 Background

Input VAT deduction under the special refund procedure for non-established businesses has always been associated with considerable practical obstacles. In addition to strict formal requirements, the exclusion deadlines (30 June for non-EU businesses and 30 September for EU businesses) are particularly problematic. The judgment of the German Federal Fiscal Court (BFH) of 25 June 2025 (XI R 17/22), belatedly published on 30 October 2025, is groundbreaking in this context: it opens up the possibility of claiming input VAT deduction through the general assessment procedure – even in the absence of supplies on German territory at the time of receiving the invoice. Furthermore, the ruling is also significant with respect to the treatment of demurrage charges and their VAT classification, as well as for determining the applicable exchange rate.

2 Facts of the case

The claimant, an Ltd. established in a non-EU country, traded in LPG (liquefied petroleum gas). In 2018, it carried out a single domestic supply in Germany. The supply took place from a UK supplier to the claimant, and from the claimant to a German customer. The supplier's original invoice did not show VAT, as both parties mistakenly assumed that the VAT warehouse regime applied. It was only in January 2019 that a corrected invoice showing VAT was issued. The claimant then claimed the input VAT deduction in its VAT return for January 2019. The tax office rejected the deduction on the grounds that, due to the absence of domestic supplies in 2019, the input VAT could not be deducted under the assessment procedure. The Federal Central Tax Office also refused to refund the input VAT under the special refund procedure according to the 13th Council Directive, arguing that the reciprocity requirement was not met. As a precaution, the claimant subsequently claimed the input VAT retrospectively in its 2018 VAT assessment.

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3 Decision of the Federal Fiscal Court

The BFH ruled in favour of the claimant. Although the court clearly distinguishes this case from a retroactive invoice correction – stating that showing VAT for the first time in a corrected invoice has no retroactive effect – it held that the right to deduct input VAT can only be exercised upon receipt of the corrected invoice. However, and this is new, the BFH also clarified that the right to deduct input VAT arises when the supply is received and may be claimed under the general assessment procedure if taxable domestic supplies were carried out at the time the right arose. The invoice showing VAT entitles the recipient to claim the deduction under the assessment procedure, even if there are no domestic output supplies at the time the invoice is received.

Furthermore, the BFH confirmed that demurrage charges do not constitute compensation for damages but rather transport costs, which follow the VAT treatment of the principal supply. Depending on whether such costs were agreed upon in advance or not, they either represent agreed consideration within the meaning of sec. 10 of the German VAT Act (UStG) or a change in the taxable amount under section 17 UStG. The court also confirmed that for invoices issued in US dollars, the exchange rate to Euro applicable at the time the supply is rendered is decisive, even if the invoice is issued at a later date.

4 Practical implications

When foreign businesses receive invoices showing German VAT and intend to reclaim the VAT under the special refund procedure, they should first check whether the timing of the incoming supply falls within a VAT period for which they were required to register in Germany. Such registration may arise, for instance, from domestic output supplies or from input supplies where the place of supply is in Germany and where these supplies are subject to the reverse charge mechanism. Input VAT incurred on supplies within these periods can be reclaimed under the assessment procedure – i.e. via VAT returns – even if, at the time of receiving the invoice, the special refund procedure for non-established businesses would normally have to be applied.

This judgment is particularly relevant

- for businesses established in non-EU countries with which no reciprocity exists and which are therefore excluded from the refund procedure;
- for cases where the deadlines for submitting refund claims have expired. Under the assessment procedure, considering the three-year suspension period and the standard four-year assessment limitation period, input VAT could theoretically still be reclaimed up to seven years later;
- from a liquidity perspective: processing times for refund claims often exceed one year, whereas refunds under the assessment procedure may, in the best-case scenario, be granted within a few weeks.

Moreover, the judgment may even allow foreign businesses to circumvent certain substantive restrictions of the refund procedure, such as those under Art. 4 lit. b) of Directive 2008/9/EC. The refund of input VAT on invoices relating to export or intra-Community supplies, which were incorrectly invoiced with VAT due to non-fulfilment of exemption requirements, is excluded under the refund procedure – but not under the assessment procedure.

The BFH's decision marks a milestone for VAT practice. It opens up new avenues for claiming input VAT deductions outside the restrictive refund procedure. Foreign businesses, as well as tax advisers assisting clients with refund applications, should take this ruling into account. It is also likely that the Federal Ministry of Finance will need to amend and clarify section 18.15 of the Administrative VAT Guidelines accordingly.

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