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Reverse charge VAT entitles foreign business to full input tax refund

The Supreme Tax Court has held that a foreign business required to file a VAT return for the year, does so for the full year. Its input tax can therefore be recovered in full.

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An Austrian business performed services in Germany subject to VAT by reverse charge. During the year under review it purchased certain building services in Germany from a foreign supplier. This made it liable to file a VAT return in order to account for its reverse charge obligation on the services purchased. It did so after year end and claimed a deduction for its input tax borne throughout the year. The tax office refused this claim insofar as it related to periods prior to the reverse charge obligation, saying that the Austrian business was then without German taxable turnover and could have, and should have, filed a refund claim as a foreign business.

The Supreme Tax Court has now sided with the taxpayer. A VAT return is an annual return and thus encompasses all relevant transactions of the year. On the other hand, the business was unaware of its filing requirement before its purchase of its reverse charge input. At that time, it could have availed itself of the foreign business refund claim procedure for EU (and for many foreign) businesses. That procedure sets the refund claim period as at least one quarter and no more than a calendar year. If the taxpayer chose to wait until year end and, in the meantime, purchased a supply with a reverse charge obligation, it lost its right to file a refund claim. It was thus forced to recover its input tax for the entire year through the one procedure still open to it – the annual VAT return.

Supreme Tax Court judgment V R 14/10 of April 14, 2011 published on August 10

Schlagwörter

VAT refund, input tax, reverse charge