Downloaded from Blogs on 15.11.2026 08:00h

By PwC Deutschland | 26. Oktober 2022

No input VAT deduction if original invoice is amended to add the missing VAT amount

According to the Supreme Tax Court, there is no retroactive right for input VAT deduction for a German company receiving services from other group companies who initially issued the invoices without VAT but later went to correct it. The correction of the invoice with retroactive effect requires that the original invoice already contains a VAT amount, which was not the case in the dispute before the court.

Downloaded from Blogs on 15.11.2026 08:00h

Background

The plaintiff, who is entitled to deduct input tax according to its sales activity, was established as a corporation under Luxembourg law. In 2016, it was *converted* into F-GmbH. In the process, the registered office was transferred to Germany and the company originally incorporated in Luxembourg was deregistered there. The plaintiff was part of a group but without meeting the consolidation requirements for a tax-group ("Organschaft"). It received services from other group companies. Due to the plaintiff's statutory registered office abroad, it was first assumed that the place of the services was to be determined in accordance with Section 3a (2) of the German VAT Act with VAT payable in the country where the recipient is resident (here: Luxembourg). Thus, the individual services provided by these companies to the plaintiff were each invoiced without German VAT. Apparently, both the supplier of the services and the plaintiff mistakenly assumed at the time that the reverse charge procedure applied.

During a tax audit it was found that the plaintiff's place of management was not in Luxembourg but in Germany and that the services provided to the plaintiff constituted services which are subject to German VAT. Given this, the service providers later issued amended invoices with separate VAT amounts. The tax office rejected the claim for input VAT deduction. The appeal brought by the plaintiff was granted by the court of first instance (Tax Court of Lower Saxony).

Decision

The Supreme Tax Court overturned the ruling of the lower tax court and dismissed the action. The correction of the invoice with retroactive effect is not possible since this requires that the original invoice already contained a VAT amount, which was not the case here.

In its opening remarks, the Supreme Tax Court points out that the plaintiff is not entitled to deduct input tax from the corrected invoices, since both the service providers and the plaintiff obviously assumed from the outset, that these services were provided in the other parts of the Community (and hence outside Germany). It had neither been the intention to have German VAT shown in the invoices nor VAT to be payable by the plaintiff.

There is no retroactive effect for the deduction of input VAT if the missing German VAT amount is later shown in an amended invoice. The Supreme Tax Court pointed to the fact that a taxable person cannot deduct a value added tax (input VAT) which has not been invoiced to him and which he has consequently not passed on to the ultimate consumer.

For an original invoice to be corrected it must include details of the issuer, the recipient of the service, the specification of the service, the remuneration and the separately stated VAT. An invoice that was not intended to account for a domestic service and therefore did not contain the VAT cannot be rectified with retroactive effect to bill the VAT which was missing in the first place. Even more since, in the year of dispute, the plaintiff had not filed any preliminary VAT returns and was also not registered in Germany for VAT purposes.

Downloaded from Blogs on 15.11.2026 08:00h

Source:

Supreme Tax Court decision of 7 July 2022 (V R 33/20), published on 20 October 2022.

Schlagwörter

corrected invoice, input VAT deduction