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By PwC Deutschland | 26. April 2026

Input VAT deduction from advance payments

In a most recent judgment, the Supreme Tax Court decided that an invoice for advance payment entitles the recipient to deduct the underlying input VAT even if it does not include an explicit reference as to the “advance payment” and provided it is apparent that the payment is made for a service still to be supplied.

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A further prerequisite for claiming input VAT in these cases is that, at the time of payment, the recipient of the invoice has reason to believe that the payment is for a service that has not yet been performed.

The dispute arose in connection with advance payments made by the plaintiff for a photovoltaic system that was not delivered due to fraud. The Supreme Tax Court dismissed the tax office's appeal and partially overturned the decision of the Munich Tax Court which partially upheld the appeal brought by the plaintiff.

The case was returned to the tax court of first instance for further review as it must still be determined whether the plaintiff is entitled to a input VAT deduction with respect to a specific invoice. In the view of the Supreme Tax Court, the Munich Tax Court did not make sufficient findings as to when exactly the payment was made in December 2011 and whether, at the time of payment, the delivery was still sufficiently certain from the plaintiff's point of view. There are reasons of doubt here in light of the subsequent correspondence. The plaintiff's alternative claim regarding the protection of legitimate expectations with respect to the input VAT deduction would then be excluded if the payment was made in December 2011; more details to be found in the Supreme Tax Court decision of 19 February 2025 - **XI R 23/24**: In this judgment, the Supreme Tax Court considers it doubtful under EU law if Germany is permitted to oblige taxpayers to take further proceedings (to obtain equitable relief) to protect their good faith. Taxpayers cannot be expected to undergo further proceedings because that would cause them disproportionate difficulties in terms of duration, complexity, and associated costs.

Source:

Supreme Tax Court, judgment of 4 December 2025 (V R 38/23) published on 23 April 2026.

Schlagwörter

Advance payment, input VAT deduction