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By PwC Deutschland | 07. Oktober 2026

Update: Interest on overdue tax or tax refunds not in breach of EU law

In a recent judgment, the Supreme Tax Court decided that the statutory interest levied on late payment or refund of value added tax amounts pursuant to Section 233a of the General Tax Code does not contravene EU law.

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Section 233a General Tax Code (GTC) states: “If the assessment of income tax, corporation tax, capital tax, VAT or trade tax results in a difference (defined as the assessed tax, reduced by allowable withholding tax credits, credit of corporate income tax, and advance payments made prior to the start of the interest period), interest shall be charged on that amount. This does not apply to the assessment of advance payments and tax withholding amounts.

In **the case at issue**, the tax office corrected an input VAT deduction that the plaintiff had previously claimed in error which resulted in additional tax payments and, pursuant to Section 233a GTC, interest on the additional tax amounts at the plaintiff’s expense. The plaintiff objected and argued, among others, that the full application of interest under the VAT regime violated EU law because it is a penalty that is incompatible with EU law, in particular with the principle of proportionality.

The Supreme Tax Court took a different view. It held that the application of full interest - as the Federal Constitutional Court had already decided in its judgment of 8 July 2021 case 1 BvR 2237/14 (1 BvR 2422/17) - creates a balance between taxpayers who are required to pay tax at different times, and has an equal effect both in favor of and to the detriment of taxpayers.

Since this purpose is not provided for in EU law - even when taking into account the case law of the European Court of Justice - the Supreme Tax Court concludes that Section 233a GTC neither applies or implements EU law nor otherwise falls within the scope of EU law.

(“Implementation of Union law” describes the actions taken by Member States, their authorities, or their courts to transpose, apply, or enforce EU law into national law)

Furthermore, and within the scope of the procedural autonomy granted to Member States, the provision also complies with the principles of equivalence and effectiveness. Even if it were assumed that the statutory interest on back taxes and tax refunds implemented Union law, the principle of proportionality under Union law would still endorse the German regulations in this respect.

In such a case, the key issue in assessing compliance with the EU principle of proportionality is not the compensating character of the provision under

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national law but rather the sanctioning objective under EU law that must then be applied.

Update (7 October 2026)

A constitutional complaint, filed under case number 1 BvR 1342/26, is currently pending regarding the full accrual of interest on value-added tax pursuant to Section 233a of the General Tax Code and EU law; this complaint was filed in response to the judgment in case V R 7/24.

Source:

Supreme Tax Court, judgment of 11 December 2025 (V R 7/24) published on 7 May 2026.

Note:

In another separate proceeding involving the same parties, the Supreme Tax Court decided on a waiver for reasons of equity as follows: If a taxpayer initially wrongfully claimed a input VAT deduction in Germany for foreign VAT amounts which is subsequently withdrawn pursuant to a revised tax assessment, interest on arrears cannot be waived even if the taxpayer cannot obtain a input VAT deduction in the other Member State for VAT legally owed there(judgment of 11 December 2025 case V R 8/24).

Section 233a of the German Tax Code (GTC) is guided by the tax liability under national law, whereas, in the case of the services in dispute, the other, independent tax liability relationship of the service providers vis-à-vis the other Member States are at issue. Furthermore, the plaintiff obtained a liquidity advantage by deducting VAT amounts without paying VAT in respect of a corresponding intra-Community acquisition.

Accordingly, there would be grounds for an equitable remedy only if it were established beyond doubt that the taxpayer did not gain any advantage or suffer any disadvantage with the result that no advantage or disadvantage can be offset by the interest on the additional tax liability or tax refund arising from the delayed tax assessment.

Schlagwörter

statutory interest rate