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Input VAT deduction on consulting fees to enforce claim for damages

IIn a recently published judgment, the Supreme Tax Court held that a company can claim input VAT incurred on consulting and legal fees in connection with pursuing claims for damages (in this case, due to the cancellation of a car toll project) because the claim for compensation arose from a planned commercial activity and thus the underlying costs are, from a VAT point of view, business-related expenses.

Background

The plaintiff is a limited liability company (GmbH) that entered into an operating agreement („the Operator Agreement“) with a federal authority (the Federal Government, „the client“) for the development and operation of a specific project (here: a car toll procurement process). Under the Operator Agreement the plaintiff was to pre-finance the costs and assume the risk associated with the planning, development, and implementation of the project. Payment for services was to be made only upon the actual commencement of the project, an “initial payment” was also envisioned. The Operator Agreement could be terminated only for good cause. Due to legal concerns that had arisen in the meantime, the client cancelled the contract. The plaintiff successfully sued the client for damages and claimed input VAT credit for the related fees on consulting services provided by third parties. The tax office denied the input VAT deduction because the VAT amounts are directly related to non-taxable (genuine) damage.

Decision of the Supreme Tax Court

The plaintiff is entitled to credit the VAT charged in connection with the consulting services.

Services obtained for enforcing claims of any kind arising in the course of a business activity always entitle to an input VAT credit, the Supreme Tax Court said. Any kind of additional connection to a non-taxable transaction - e. g., the payment of (genuine) damages which are outside the scope of VAT - is irrelevant even if said business activity was merely intended but never actually started.The costs of the consulting services (the input services) are not part of the price of specific output transactions but were used specifically and directly to obtain compensation. This compensation was based on a business venture that had originally been planned. The claim for damages is associated with the eventual and inevitable liquidation of the company. The plaintiff explained that it needed the damage payments to make corresponding compensation payments to its original contractual partners.

The cause of the compensation payment is the planned Operator Agreement. As a result, the legal and consulting fees are economically justified as business-related expenses.

Source:

Supreme Tax Court, judgment of 7 May 2026 (V R 15/24) published on 30 July 2026.

Schlagwörter

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