Downloaded from Blogs on 03.11.2026 05:05

By PwC Deutschland | 26 May 2011

Germany must assist in an EU VAT systems audit?

An ECJ advocate general has suggested the court condemn Germany for refusing assistance to the EU Court of Auditors in its attempt to conduct a field review of cooperation with other member states on VAT matters.

Downloaded from Blogs on 03.11.2026 05:05

The EU Court of Auditors wished to conduct a three day field review in Germany as part of a project to assess the functioning – and thus the efficiency and effectiveness – of the cooperation and information exchange systems between member states on VAT matters. An initial approach to the auditor general elicited a positive response; however the follow up request to the specifically responsible authority, the Central Tax Office, to agree dates and to supply information on the type and frequency of information exchanges and other mutual assistance requests was not answered. A complaint to the finance ministry also proved fruitless, although it did prompt the auditor general to withdraw his support for the review in order to avoid involvement in a struggle between national and community government. Finally, the Commission sued Germany before the ECJ in the hope of forcing the required assistance.

The advocate general on the case has now suggested that the ECJ hold that Germany is not entitled under community law to refuse to cooperate with the EU Court of Auditors. Her basis is the community law definition of the EU portion of VAT revenue as a community resource and the duty of the Commission to protect community resources from loss through fraud or maladministration. On the other hand, VAT administration is primarily the responsibility of member states; thus the Court of Auditors does not have unlimited powers to act in respect of VAT generally. In this case, the intended object of the review was the systematic cooperation with other member states and not the correct assessment of specific transactions. The Court of Auditors had planned its programme with due regard for the national rights and interests. In summary, it had the right to act in the intended manner, and its intentions were neither disproportionate nor in breach of German subsidiarity.

The ECJ case reference is C-539/09 *Commission v. Germany*, opinion of May 25, 2011.

Keywords

Court of Auditors, cooperation, member states