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Foreign business to recover input tax with VAT return if any output tax owed

The Supreme Tax Court has held that a foreign business should file an annual return for VAT showing its entire recoverable input tax for the year if it owed output tax at any time during the year for any reason.

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A foreign business without taxable outputs in Germany recovers its deductible German input tax through a special procedure for foreign business undertakings. Businesses from other EU countries file their refund claims through their own tax authorities by September 30 of the following calendar year; those from outside the EU file their claims with the Central Tax Office by June 30. However, businesses from outside the EU are excluded from the refund procedure altogether if their own country levies a tax similar to VAT without offering German business reciprocal refund rights. On the other hand, a foreign business with taxable turnover in Germany files a regular VAT return of all its taxable inputs and outputs, even if the two are not connected. This procedure is more complicated than the simplified refund claim system, but does free the applicant from the tight deadlines and also opens the door to refunds to non-EU businesses that would otherwise be disbarred for lack of home country reciprocity.

In a recent case involving a foreign road haulage company, the Supreme Tax Court has confirmed that the two systems are mutually exclusive. Thus a foreign business can only apply one or the other for any one year. However, the court went on to add that a foreign business must follow the mainstream system of filing a full return for any year in which it owed output tax to the authorities at any time for any reason. In particular, this included cases of output tax owed because it had been invoiced in error. The details of the case are (now) unimportant following changes in the law in the meantime, but the point made by the court was in response to a tax office claim that VAT owed as a result of an incorrect charge could not open the way to an otherwise barred input tax deduction. To this, the court replied that any VAT owed had to be shown on a return, and any return was incomplete without the full amount of input tax deductible. It is, however, emphasised that foreign businesses are still excluded from the mainstream system if their outputs are taxed by reverse charge or by transaction (special system for non-EU busses), that is, if they are not the tax office' debtor.

Supreme Tax Court judgment XI R 5/11 of August 28, 2013 published on October 16

Keywords

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