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By PwC Deutschland | 05 November 2023

VAT due upon credit of payment to current account if option to charge VAT upon receipts is chosen

In a recent decision, the Supreme Tax Court held that - in the case of bank transfers - the chargeable VAT for payments is incurred at the time the respective amount is credited to the payee's current account, even if the value date is at an earlier point in time.

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Background

The case before the Supreme Tax Court dealt with the question at which point in time a taxpayer (here: the plaintiff) is entitled to deduct input VAT if he chose to be charged to VAT at the time the total remuneration is received (cash / remittance basis) rather than on the basis of the remuneration agreed (where the VAT is to be charged when the service has been provided).

Section 13 (1) no. 1 letter b VAT Act deals with the time at which the VAT shall be incurred. For the supply of goods and services in cases where - upon request - the output VAT may be calculated at the time the remuneration is received, VAT is due on the expiry of the preliminary VAT return period, in which payment was received.

In the annual VAT assessment for 2019 (year in dispute), the tax office took into account the payments received by the plaintiff for taxable transactions. Although the amount in question was not credited to the plaintiff's current account until 2 January 2020, it had already to be recognized in the year 2019 due to the retroactive value date as of 31 December 2019. The objections of the plaintiff were dismissed by the tax office. The action before the tax court of Berlin-Brandenburg was successful.

Decision

The Supreme Tax Court also held in favor of the plaintiff.

Receipt within the meaning of Section 13 VAT Act requires that the entrepreneur can economically dispose of the consideration for his service. It further requires that the payee has access to the funds from an economic point of view insofar that he can dispose of the payment at any time. In the case of money transfers, the amounts are therefore received when credited to the payee's current account. It is of no relevance if the value date is at an earlier point in time.

If - as in the case in dispute - the value date is prior to the date of credit, the amount is nevertheless available to the account holder only when credited, as he has access to the amounts received only from this point in time. The value date is merely a means used in the banking market to calculate the effective interest rate.

The objections raised by the tax office in this respect are not convincing. Its interpretation and understanding of Article 87 (1) and (2) of Directive (EU) 2015/2366 ***)** and Section 675t (1) German Civil Code (BGB) assumes that these provisions do not permit a value date prior to the date of credit. In fact, in the case in dispute, the settlement of the money transfer is in accordance with Section 675t (1) BGB. Under this provision, the value date must be the business day on which the amount was credited to the payee's payment service provider. However, as laid down in Section 675t (1) sentence 2 BGB, the payment may be credited to the payee's account on the following business day, only then does the claim from the credit arise for the benefit of the payee.

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Supreme Tax Court judgment of 17 August 2023 (V R 12/22), published on 2 November 2023

***) DIRECTIVE (EU) 2015/2366 on payment services in the internal market**

Article 87 *(on the value date and availability of funds)*

1. Member States shall ensure that the credit value date for the payee's payment account is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.

2. The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account where, on the part of the payee's payment service provider, there is:

(a) no currency conversion; or

(b) a currency conversion between the euro and a Member State currency or between two Member State currencies.

Keywords

collection of VAT, input VAT, remittance basis