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By PwC Deutschland | 26 October 2025

Correction of input VAT deduction if import VAT was repaid during insolvency proceeding

The dispute before the Supreme Tax Court concerned the question of whether the tax office was correct to adjust an input VAT deduction of the plaintiff - following a successful appeal under insolvency law - where the plaintiff later received a refund of the import VAT paid. The court could not see any reasons why the plaintiff should receive a refund even though it no longer owed the tax.

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Background

In the case of dispute, the question arose before the tax courts whether the successful appeal against an import VAT payment during insolvency proceedings simultaneously leads to a correction of the input VAT deduction. The plaintiff, a public limited company (AG), is an operating holding company. For the months of January and February 2019, it paid the import VAT assessed by the main customs office and deducted the same amount as input VAT in its monthly advance VAT returns. In April 2019, insolvency proceedings were brought against the plaintiff's business with the order of self-administration (where the debtor assumes the role of (provisional) insolvency administrator under the supervision of a (provisional) administrator). After the administrator contested the payment of import VAT, the main customs office refunded the amounts paid for January and February 2019 to the insolvency estate in October 2019.

The tax office then reduced the input VAT deduction for October 2019 of the plaintiff. The tax office relied on Section 17 (3) sentence 1 of the German VAT Act. The purpose of the input VAT refund is one of relief of a burden. If the burden no longer applies the relief must then also be reversed.

Section 17 (3) of the VAT Act provides that where the import VAT, which has been deducted as input VAT, has been reduced, waived or reimbursed, the taxable person must adjust the input VAT deduction accordingly.

Decision

The term “refunded/reimbursed” in Section 17 (3) sentence 1 VAT Act is meant to refer to the actual reimbursement at payment level. It is therefore irrelevant whether the original payment was made in the absence of legal grounds within the meaning of Section 37(2) Fiscal Code.

Accordingly, the term ‘due’ within the meaning of Article 17(2)(b) of the VAT Directive must be interpreted as meaning that it requires that the taxable person has a legally enforceable obligation to pay the amount of VAT which he seeks to deduct as input VAT. If there is no such obligation, then he cannot be entitled to a right to deduct in respect of VAT on importation which has not yet been paid.

Source:

Supreme Tax Court judgment of 4 June 2025 XI R 7/22 published on 23 October 2025.

Keywords

adjustment, input VAT