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By PwC Deutschland | 11 September 2026

Update: General Court - Deduction of input VAT if invoice is received after service has been provided

In a most recent judgment following a Polish request for a preliminary ruling, the General Court of the EU confirmed the incompatibility of the local input VAT regulations with EU Law and held that the right to deduct input VAT arises with the supply and the chargeability of the tax, and must not depend on the immediate possession of an invoice provided that the taxable person did receive the invoice before submitting the VAT return. Any national “forced deferral” violates the principle of fiscal neutrality.

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Background

The company in the main proceedings is subject to VAT in Poland. It purchased gas and electricity and sought to deduct input VAT for the period in which the supplies occurred even though the invoices were received only in the following period. The Polish tax authority held that the deduction could arise only when the invoice was received thus delaying the right of deduction.

Decision

In the present judgment, the General Court emphasizes that the right to deduct input VAT depends exclusively on the fulfillment of substantive (material) conditions and not on the possession of an invoice which is only a formal condition for exercising that right. Input VAT can be deducted promptly if the invoice is available by the time the tax return is filed. In this respect, the judgment provides companies with a welcome liquidity advantage.

The distinction between the substantive and formal preconditions governing the right of VAT deduction is important since, according to settled ECJ case law, the fundamental principles of VAT neutrality and proportionality require deduction of input tax to be allowed if the substantive requirements are satisfied even if the taxable person has failed to comply with some of the formal requirements. The ECJ has also specified that the non-compliance with formal requirements, which may be remedied, is not such as to call into question the proper functioning of the VAT system.

The right of input VAT deduction therefore arises regardless whether an invoice is available at the time. The possession of an invoice is only a formal condition for the exercise of that right.

The Polish tax authority had argued that the national provision at issue was such as to prevent, in particular cases, output VAT from being deducted before it was declared as input tax in order to avoid problems concerning the verification of settlement of invoices. However, that risk is not present in the situation here because the taxable person did hold a valid invoice at the time it submitted its tax return which enabled the tax authority to perform the necessary checks. A Member State cannot pursue the objective of ensuring the correct collection of VAT and of preventing evasion by way of a general measure which does not provide for account to be taken of all the relevant circumstances, and which is capable of systematically impeding the right of deduction for all taxable persons.

Note: In Germany, Section 15 para. 2 Sentence 6 of the VAT Act Application Ordinance states that if there is a time difference between the receipt of the service and the receipt of the invoice, the input tax deduction is permissible for the **tax period** in which both conditions are met for the first time. In light of the fact that „tax period“ could also refer to the preliminary VAT return to be submitted monthly or quarterly a liquidity advantage is obvious when looking at the current decision of the General Court in the Polish case.

Update (11 September 2026)

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In her **Opinion of 10 September 2026**, the Advocate General proposes a new answer to the questions posed by the referring court, which reaffirms the existing legal position: In her view, the right to deduct input tax must (continue to) be exercised for the period during which the two necessary conditions (provision of the service and possession of the corresponding invoice) are first met. After all, the judgment of the General Court of 11 February affects the unity and consistency of EU law.

Update (16 April 2026)

In its decision of 26 March 2026 (case ref. C?167/26 *RX*), the Court of Justice decided to review the judgment of the General Court of the European Union of February 11, 2026.

Update (12 March 2026)

ECJ to review General Court decision T-689/24

The First Advocate General has initiated a review procedure against this judgment; ECJ case reference: C-167/26 RX. The ECJ will issue a statement on this matter shortly. Pursuant to Article 62 of the Statute of the Court of Justice of the European Union, the ECJ shall decide within one month of the First Advocate General's proposal whether or not to review the decision.

Source:

General Court, judgment of 11 February 2026 in the case **T?689/24** *Dyrektor Krajowej Informacji Skarbowej*.

Keywords

input tax deduction, invoice requirements