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By PwC Deutschland | 03 May 2026

Double correction upon commencement of insolvency proceedings

In a recently issued judgment, the Supreme Tax Court decided that, upon the opening of insolvency proceedings, the second correction due to uncollectible amounts does not depend on the accuracy of the first correction made in the insolvency process. The correction made at the expense of the insolvency estate is separate from the previous correction.

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Legal Background

Section 17 (1) VAT Act provides for a correction of the taxable amount if the taxable amount for a taxable transaction has changed, the taxable person who executed this transaction must adjust the respective VAT amount due.

Pursuant to **Section 17 (2) No. 1 VAT Act**, the tax must first be adjusted if the agreed consideration for a taxable supply of goods and services or a taxable intra-Community acquisition has become uncollectible. In the event that the consideration is subsequently received, the VAT amount and the input VAT deduction are to be readjusted.

According to **Section 38 of the Insolvency Code** (IC) the insolvency estate serves to satisfy the well-founded claims held by the personal creditors against the debtor on the date when the insolvency proceedings were opened (insolvency creditors).

Section 270 (1) IC states that the debtor is entitled under the supervision of an insolvency monitor to manage and realize the insolvency estate if the insolvency court orders such self-administration (debtor-in-possession management) to open the insolvency proceedings. Such proceedings are subject to general legal provisions, unless otherwise provided.

The case in dispute

The tax office submitted VAT receivables for the period prior to the commencement of insolvency proceedings (January 1–November 16, 2019) to the table of insolvency claims without taking into account adjustments for uncollectible amounts. The VAT claim remained uncontested. After the insolvency plan became final, the proceedings were discontinued in 2020. In July 2020, the plaintiff (a GmbH) filed two annual VAT returns for 2019 (one before and one after the commencement of insolvency proceedings). The GmbH asserted that it had initially inadvertently failed to make the necessary adjustments under Section 17 of the VAT Act and requested a set-off: For the period prior to the commencement of insolvency proceedings a claim for a refund existed while for the period thereafter a VAT liability was incurred.

The lower tax court had dismissed the action brought by the plaintiff. It held that, despite the failure to issue an initial correction, a subsequent correction was possible and that there was no impermissible double taxation. Since

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payments were received subsequently, a correction of the VAT was necessary. The transactions are separate issues that must be assessed as such and would trigger independent correction in accordance with Section 17 VAT Act.

The plaintiff's appeal to the Supreme Tax Court was also rejected.

Decision of the Supreme Tax Court

The tax court of first instance correctly rejected the request to amend the VAT assessment for the period following the commencement of insolvency proceedings (November 17–December 31, 2019). The second adjustment to be made upon subsequent collection was independent from the first adjustment.

If, after the opening of insolvency proceedings, payments for services previously rendered that had initially become uncollectible are subsequently received and debited from the insolvency estate the second correction to be made in accordance with Section 55 IC does not require that the first correction has been properly carried out under procedural law with effects in favor of the field of insolvency under Section 38 IC (according to which the insolvency estate serves to satisfy the personal creditors).

This "double correction" is recognized under EU law (Art. 90 of the VAT Directive). In the event of insolvency, the first correction results in a reduction of the insolvency claim (Section 38 IC), while the second correction, upon receipt of payment, gives rise to a debt incumbent on the estate (Section 55 IC).

The Supreme Tax Court did not accept the plaintiff's argument that it had (initially) inadvertently failed to properly allocate and adjust the pre-insolvency portion within the context of self-administration. In that case, the insolvent debtor (here: the plaintiff) could, by failing to make the first adjustment, determine whether the tax liability arising from the second correction could be assessed at the expense of the estate.

Lastly, the Supreme Tax Court points out that the allowable double correction also applies in the case of self-administered insolvency proceedings (i. e. under debtor-in-possession management).

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Keywords

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