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By PwC Deutschland | 27 November 2026

ECJ overturns decision of the General Court regarding the exercise of the right to deduct VAT

As commonly expected, the European Court of Justice (ECJ) overturned the earlier decision from February 2026 of the General Court (GC) who held that the right for input VAT deduction must not depend on the immediate possession of an invoice provided that the taxable person did receive the invoice before submitting the VAT return.

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Background

In its erstwhile judgment, 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. More details to be found in our updated **blog post of 11 September 2026**.

Decision

The ECJ set aside the former decision and decided as follows:

The answer given by the General Court to the question referred for a preliminary ruling is to be replaced by the following answer:

Article 167, Article 168(a), Article 178(a) and the first paragraph of Article 179 of Directive 2006/112, as amended by Directive 2010/45, read together with the principles of neutrality, effectiveness and proportionality, must be interpreted as meaning that they do not preclude national legislation under which a taxable person may not exercise his or her right to deduct input VAT by setting it off against the VAT due for the tax period in which that right arose, where he or she receives the corresponding invoice before submitting the return relating to that period, but during a subsequent tax period.

First, according to the ECJ, the ECJ case cited by the General Court - the judgment of 29 April 2004, *Terra Baubedarf-Handel* (C?152/02) - did not concern the situation of a taxable person who did not hold an invoice or a document of that kind when he or she exercised his or her right of deduction. It is apparent from paragraphs 9 and 10 of that judgment that although the taxable person at issue had not received the invoices during the tax period in which the taxable transactions had been carried out, the taxable person nevertheless had them in his possession during the subsequent tax period. The taxable person wished to exercise his right of deduction not for the period during which it had received the invoices but for the period during which the taxable transactions had taken place.

Second, it is also liable to**adversely affect the principle of effectiveness and the objective of simplicity of the VAT system**. For one thing, it requires account to be taken not only of the date of receipt of the invoice but also of the possibility for the taxable person still to submit a return for the relevant period and the date of submission of that return. This results in an additional burden, both for taxable persons and for the tax authorities, in determining the relevant period, in particular where transactions give rise to a large number of invoices. Since invoices relating to the period in which the right of deduction arises could be taken into account until the actual submission of the return relating thereto, taxable persons are not in a position to determine precisely, before the submission of that return, the extent of their right of deduction.

Third and lastly, the interpretation of the General Court is liable to **adversely affect the principle of VAT neutrality**, in that it would allow a taxable person to deduct VAT, for the period during which the taxable transactions were carried out, also in a situation where that taxable person did not actually pay that VAT

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until a later period, when he or she received the corresponding invoices.

Thus, the General Court's answer to the question raised by the referring court misinterprets the literal, systematic, and teleological interpretation of Article 179(1), in conjunction with Article 178 of the VAT Directive as well as the resulting provisions concerning the details of the exercise of the right to deduct input VAT.

Source: ECJ, judgment of 26 November 2026 **C-167/26 RX** *Dyrektor Krajowej Informacji Skarbowej*.

Keywords

input tax deduction, invoice