



Global Tax Update

Germany

Deloitte Tohmatsu Tax Co.

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13th directive VAT refund claim rejected because of delayed submission of invoices

A non-EU established company must submit original invoices to the German tax authorities within a specified period for to obtain a refund of input VAT.

Germany's federal tax court (BFH) issued a decision dated 19 November 2014 (published in 2015) regarding the criteria to successfully reclaim input VAT under a "13th directive" claim.

Certain non-EU companies are entitled to claim a refund of input VAT on German purchase invoices by using the EU 13th directive VAT refund claim procedure. In Germany, a number of requirements must be met to reclaim German input VAT; one of these requirements is that the original invoice be submitted to the tax authorities by 30 June of the following year.

The taxpayer in the case submitted its VAT refund claim without timely providing the original invoices, because the original documents had disappeared. The taxpayer subsequently submitted the original invoices as part of an appeal procedure to reclaim the input VAT, but the documents were not submitted before the 30 June deadline. The tax authorities denied the input VAT refund.

The BFH upheld the decision of the tax authorities, stating that the submission of the original invoices within the appeal period after

the refund claim was rejected did not result in an opportunity to apply for restitution in integrum and a consideration of the invoices for the claim, since the delayed submission of the invoices should be considered an organisational fault.

In a similar decision dated 5 June 2014, the Finance Court of Cologne denied an input VAT refund claimed by an EU company under the "8th directive" (which generally replaced the 13th directive for EU businesses in 2010), because the claimant failed to electronically submit the invoices before the specified deadline.

Thus, even if the present case involves the VAT refund claim procedure applicable before 2010, the BFH decision, as well as the decision by the Finance Court of Cologne, indicate the strict manner in which the German courts will interpret EU law. Several similar cases are pending before the German finance courts.

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