



Global Tax Update

Germany

Deloitte Tohmatsu Tax Co.

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BFH rules on procedure for input VAT refund for non-residents

Non-resident businesses are allowed to apply for input VAT refund within regular VAT returns when issuing invoices where German VAT is incorrectly charged

In a decision dated 19 November 2014, the Federal Tax Court (BFH) ruled on whether a taxpayer is allowed to claim input VAT within the general VAT assessment procedure even though the only VAT due is VAT incorrectly charged in invoices according to Sec. 14c German VAT Act.

The case involved a company that owns a wind mill in Germany. The company has been established as a German GmbH but has its actual place of management in Denmark and does not have a sufficient decree on personal resources in Germany so that from a German VAT perspective the company is neither resident in Germany nor does it have a fixed establishment for VAT purposes in Germany.

Invoices were however issued incorrectly with German VAT. Thus, the company filed VAT returns and claimed input VAT in the returns.

The tax office challenged the input VAT deduction arguing that the company should have used the special refund procedure for non-residents instead.

The BFH held that the company is allowed to claim input VAT within the general VAT assessment procedure, since the company is required to file a VAT return based on the obligation to report the incorrectly charged VAT.

As a result, the company does not have to submit a separate input VAT refund claim to reclaim its input VAT.

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