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German Tax and Legal News

Lower Finance Court rules on VAT implications of installment-based agreements

If due date is more than two years after the supply, the installment may be treated as a bad debt so that full VAT liability would arise only after payment is received

The Finance Court of Lower Saxony issued a decision on August 18, 2016 on the VAT implications of installment payments where payment is due more than two years after the actual supply is made.

In general, the tax point for German VAT purposes is the actual supply date. Any delays in payment should not affect the VAT liability of the supplier unless there is a default in payment within the meaning of the bad debt rules; this generally requires an unequivocal refusal to pay by the customer or where the customer is unable to pay.

However, the Federal Tax Court (BFH) held in 2013 that a contractually agreed security retention for a period of two to five years can be considered a bad debt at the time of the supply, thus allowing the taxable base of the supply to be reduced at that time.

The Finance Court of Lower Saxony now has ruled that a contractually agreed installment payment with a due date of more than two years after the supply will be considered as a bad debt at the time of the supply so that VAT on the installments would become due only when payment is received and not at the time of the supply.

The decision has been appealed to the BFH.

Suppliers that have agreed to long-term installments may wish to consider whether to apply the Lower Saxony court decision to keep VAT assessments open until the BFH issues its final decision in the case and potentially benefit from cash-flow and interest advantages.

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