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German Tax and Legal News

Principle of VAT neutrality prevails over domestic rules

The CJEU has ruled that VAT neutrality is a basic principle of EU VAT harmonization and this principle cannot be restricted by the domestic law of the EU member states.

In a decision dated 23 April 2015 (C-111/14, GST – Sarviz AG Germania), the Court of Justice of the European Union (CJEU) ruled that the principle of VAT neutrality required a refund of VAT in a case where the reverse charge was incorrectly applied, but could not be corrected under domestic law due to the expiration of the statute of limitations.

The case involved a consulting company established in Germany that provided various technical and other consultancy services to an affiliate in Bulgaria. The Bulgarian recipient paid VAT on the services under the reverse charge because it assumed that the German company did not have a permanent establishment in Bulgaria at the time the services were provided.

However, following a Bulgarian audit, the Bulgarian tax authorities determined that the German company did have a permanent establishment in Bulgaria. As a result, the German company was obliged to report the Bulgarian VAT, as the supplier of the services, and the reverse charge should not have been applied (the CJEU confirmed that this is correct). The Bulgarian tax authorities assessed the VAT, and the German company paid the assessment.

Because the statute of limitations period had expired, it was no longer possible for the German company to amend the relevant VAT invoices under Bulgarian law, so it was not able to recharge the VAT it paid to the Bulgarian tax authorities, because the service recipient could not reclaim this amount as input VAT without the amended VAT invoices. Accordingly, the German company requested a refund of the VAT it paid to the Bulgarian tax authorities on the grounds that the VAT had been paid twice: once by the German company and once by the Bulgarian company under the reverse charge.

The CJEU held that the VAT had to be refunded to the German company, because the principle of VAT neutrality provides that VAT cannot be paid twice, even where a country's domestic rules otherwise would not permit a VAT refund.

The CJEU clarified that the principle of VAT neutrality is a basic principle of EU VAT harmonization and this principle cannot be restricted by the domestic law of the EU member states.

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