VAT deduction and receipt of invoices — the Court sets aside the General Court's judgment on review

EXECUTIVE SUMMARY

In its judgment of 26 November 2026 in Case C-167/26 *RX, Dyrektor Krajowej Informacji Skarbowej*, the Court of Justice sets aside the General Court's judgment on the period in which VAT deduction may be exercised and replaces its answer to the referring court through the exceptional review procedure. The Court considers that the General Court's interpretation affects the unity and consistency of EU law: by departing from the rules governing the exercise and monitoring of VAT deduction, it undermines the functioning of the common VAT system as a whole.

The General Court had allowed VAT to be deducted for the period in which the purchase took place even where the invoice was received in the following period, provided that it was received before the relevant return was submitted. The Court of Justice instead confirms the approach established in *Terra Baubedarf-Handel*, C-152/02: the first period in which deduction may in principle be exercised is the period in which both the substantive conditions and the requirement to hold an invoice are satisfied. EU law therefore does not preclude national legislation preventing deduction for the earlier period in those circumstances.

The judgment therefore has a dual significance: it resolves a divergence in case law concerning the timing of VAT deduction and confirms, for businesses, the importance of the invoice receipt date when preparing VAT returns.

Background

The dispute concerns I. S.A., a Polish company operating a clearing and settlement house for transactions carried out by its members, including transactions on the gas and electricity markets. In the course of those activities, the company is treated as the purchaser and reseller of the goods and appears as such on the invoices.

The company received certain invoices in the VAT period following that in which the supplies took place, but before the deadline for submitting the return for the period of supply. It therefore asked the Polish tax authorities whether it could deduct the VAT in the return for the period in which the tax had become chargeable.

The authorities rejected that interpretation, considering that deduction could not be exercised for a period preceding receipt of the invoice.

The issue therefore concerned the period to which the deduction should be attributed, rather than the ultimate entitlement to recover VAT.

The General Court's approach and the subsequent review.

VAT deduction and receipt of invoices — the Court sets aside the General Court's judgment on review

In its judgment of 11 February 2026, the General Court distinguished the origin of the right to deduct from the conditions governing its exercise.

According to the General Court, the right arises when the substantive conditions laid down by the VAT Directive are satisfied, whereas holding an invoice is a formal condition for exercising that right. The taxable person should therefore be able to include the VAT in the return for the period in which the substantive conditions were satisfied, provided that the invoice was received before that return was submitted.

However, this approach, which placed greater emphasis on the substantive conditions, raised a broader question concerning its consistency with the Court of Justice's case law. Following a proposal submitted by the First Advocate General on 4 March 2026, the Court of Justice decided on 26 March 2026 to review the judgment to determine whether that interpretation affected the unity or consistency of EU law.

In her Opinion of 10 September 2026, Advocate General Kokott proposed correcting the General Court's approach, considering it incompatible with the Court's settled case law and, in particular, *Terra Baubedarf-Handel*.

The Court now finds that the General Court's judgment adversely affects the unity and consistency of EU law, sets it aside and substitutes its own answer to the referring court's question.

The relationship with earlier case law

The central precedent is *Terra Baubedarf-Handel*, C-152/02, of 29 April 2004. The invoices concerned services supplied in 1999 but were received in January 2000. The Court identified 2000 as the period for deduction because it was only then that both conditions were satisfied: the right to deduct had arisen and the taxable person held the invoices.

The Court expressly rejects the General Court's attempt to distinguish that precedent: in *Terra*, too, the taxable person held the invoices when claiming deduction, but had not held them during the period for which it sought to exercise that right. Having an invoice when submitting the return does not therefore resolve the question of the period to which the deduction should be attributed, which is governed by Article 179 of the VAT Directive.

The same approach was reaffirmed in *Aptiv Services Hungary*, C-521/24, of 12 March 2026, concerning intra-Community acquisitions. The Court protected deduction exercised in the period in which the invoices were actually received, after the acquisitions had taken place, where the taxable person acted in good faith and within the applicable limitation period.

VAT deduction and receipt of invoices — the Court sets aside the General Court's judgment on review

Why the filing date cannot determine the deduction period

The Court also identifies the practical difficulties created by the General Court's approach. Indeed, it would make the deduction period depend not only on when an invoice is received, but also on whether the relevant return can still be submitted and when it is actually submitted. This would increase the burden on businesses and tax authorities, particularly where large numbers of invoices are involved, and prevent the amount deductible for a period from being determined precisely before the return is filed. The Court considers that outcome liable to undermine the principle of effectiveness and the objective of simplicity of the VAT system.

Correcting an invoice does not bring forward its receipt

The General Court had relied on *Senatex*, C-518/14, reasoning that, if an irregular invoice could be corrected retroactively, deduction should all the more be allowed where a compliant invoice was available when the return was submitted.

The Court nevertheless cites *Senatex* among the authorities supporting the requirement to hold an invoice before exercising deduction. According to Kokott, *Senatex* supports the opposite conclusion to that drawn by the General Court: in that case, the taxable person already held an invoice in the period for which deduction was claimed. Its subsequent correction merely remedied missing details, allowing deduction to retain its effect for that period. Here, by contrast, no invoice had been received during the period for which deduction was sought. The distinction is decisive: correcting the contents of an existing invoice is different from identifying the first period in which the taxable person holds the document required to exercise the right to deduct.

VAT deduction and receipt of invoices — the Court sets aside the General Court's judgment on review

Implications for businesses in Luxembourg

The issue is directly relevant to Luxembourg businesses. Article 48 of the Luxembourg VAT Law links the origin of the right to deduct to the chargeability of VAT and makes its exercise conditional on holding an invoice complying with Article 63. These requirements must be read together to determine the first period in which deduction may be exercised.

Particular attention should be paid to invoices received after the end of a VAT period but before the corresponding return is submitted. The fact that a return has not yet been submitted does not automatically allow all invoices received in the meantime to be included as deductible input VAT for that period. Similarly, neither the invoice issue date nor the accounting period to which the expense is allocated replaces the need to establish when the invoice was received.

Businesses should therefore ensure that their accounts payable procedures retain reliable evidence of receipt and distinguish invoices received late from corrections to invoices already held. This control is relevant to every monthly or quarterly VAT closing, as well as to periods falling in different calendar years.

The judgment concerns the first period in which deduction may be exercised. It does not mean that failure to deduct in that period necessarily results in the loss of the right: the Court recalls that Articles 180 and 182 of the VAT Directive allow Member States, by way of exception, to authorise deductions not made in accordance with Articles 178 and 179, subject to national conditions and procedures.

Any positions adopted in reliance on the General Court's judgment will need to be reassessed in light of the Court's judgment. The potential exposure concerns primarily the premature exercise of deduction and its consequences under national rules, rather than necessarily the loss of the underlying right to recover VAT.

INTERESTED?

Get in touch with:



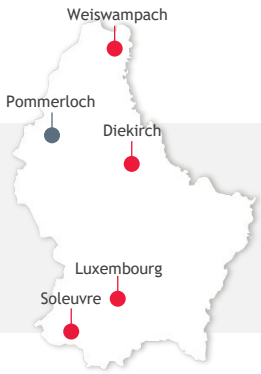
Nicolas Devillers
Partner
nicolas.devillers@bdo.lu
+352 45 123 660



Erwan Loquet
Partner
erwan.loquet@bdo.lu
+352 45 123 436

BDO IN LUXEMBOURG

- **Audit & Assurance**
- **Advisory**
- **Business Services & Outsourcing**
- **Tax**



This publication has been carefully prepared, but it has been written in general terms and should be seen as containing broad guidance only.

This publication should not be used or relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained in this publication herein without obtaining specific professional advice.

Please contact the appropriate BDO Member Firm to discuss these matters in the context of your particular circumstances.

No entity of the BDO network, nor the BDO Member Firms or their partners, employees or agents accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO is an international network of public accounting firms, the BDO Member Firms, which perform professional services under the name of BDO. Each BDO Member Firm is a member of BDO International Limited, a UK company limited by guarantee that is the governing entity of the international BDO network.

Service provision within the BDO network is coordinated by Brussels Worldwide Services BVBA, a limited liability company incorporated in Belgium with its statutory seat in Brussels.

Each of BDO International Limited (the governing entity of the BDO network), Brussels Worldwide Services BVBA and the member firms of the BDO network is a separate legal entity and has no liability for another such entity's acts or omissions. Nothing in the arrangements or rules of the BDO network shall constitute or imply an agency relationship or a partnership between BDO International Limited, Brussels Worldwide Services BVBA and/or the member firms of the BDO network.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.

© 2026 BDO Tax & Accounting

All rights reserved.

www.bdo.lu