



KMLZ VAT NEWSLETTER

Input VAT deduction even if a reference to other invoice documents is missing

The national fiscal court case law is increasingly bidding farewell to formal requirements associated with the issuing of invoices. An incomplete invoice can entitle to input VAT deduction even if the invoice does not explicitly refer to any other invoice documentation, which contained the missing information.

1. Facts

The Plaintiff purchased taxable supplies from its parent company and received so-called daily invoices. These daily invoices contained all the required invoice information with the exception of the VAT rate and the VAT amount. At the end of each month, the Plaintiff and the parent company compared the values related to the rendered supplies. The cross checking was based on a list of monthly postings. The list contained all the invoice numbers, invoice data and invoice amounts for the entire month. Based on this cross

Input VAT deduction from incomplete invoice

In its legally binding judgement of 16.03.2018 (1 K 338/16 U), the tax court Düsseldorf granted input VAT deduction from an incomplete invoice. The incomplete invoice did not explicitly refer to any other invoice documents, which contained the missing information. Nevertheless, the tax court Düsseldorf granted the input VAT deduction anyway. This is because a specific and unambiguous reference to other accounting documents relating to the incomplete invoice was derived from the factual connection. It is not required that an incomplete invoice explicitly refers to other invoice documents.

checking system, the parent company issued a monthly statement of accounts at the end of the month. This contained the total remuneration for the monthly supplies, showed the VAT rate of 19%, as well as the total VAT amount due for the monthly supplies. The monthly statement of accounts did not explicitly refer to the daily invoices.

The Plaintiff claimed input VAT deduction from the invoice documents consisting of the daily invoices and the monthly statement of accounts. The competent tax office, however, took the view that the invoice documents did not meet the requirements provided for in sec. 14 para 4 of the German VAT Act and sec. 31 of the German VAT Implementation Code.

The monthly statement of accounts, which clearly showed the VAT amount, did not refer to the daily invoices, which contained the missing invoice information.



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2. Reasons for the decision

The tax court granted the input VAT deduction because in addition to the material requirements, the formal requirements for input VAT deduction were also met. Due to the monthly statement of accounts, in conjunction with the individual daily invoices and the monthly lists, the Plaintiff was formally entitled to deduct.

2.1 ECJ judgment in the case *Barlis 06*

The information on the invoice must enable the fiscal authorities to check the payment of the VAT and, where necessary, the entitlement to VAT deduction. The tax court confirmed the ECJ principles, according to which input VAT deduction must be granted where the material requirements are met. This applies even in cases where the invoice information provided did not satisfy all of the specific formal requirements. In these cases, it needs to be determined whether annexes to the invoice contain the missing information and specifically and unambiguously refer to the initial invoice. Here, the tax court followed the ECJ judgment in the case *Barlis 06*.

2.2 Factual connection sufficient

Based on these principles, the tax court concluded that the monthly statement of accounts, viewed in conjunction with the daily invoices and the monthly issued lists, formally resulted in the requirements for input VAT deduction being met. According to the tax court, the monthly lists represent-

ed a binding link between the daily invoices and the respective monthly statement of accounts. It is not necessary that an incomplete invoice explicitly refers to other invoice documents or that these be attached to the said invoice. Where the fiscal authorities have available all of the data needed in order to check whether or not the material requirements for input VAT deduction are met, this is satisfactory. It is sufficient that the specific and unambiguous reference to the initial invoice, from a material perspective, derives from the factual connection.

3. Consequences

For taxable persons, this decision is to be welcomed. Fortunately, case law also applies ECJ principles from the legal case *Barlis 06*, where the invoice consists of several accounting documents.

Even if an incomplete invoice does not explicitly refer to other invoice documents, which contain the missing information, taxable persons are recommended to check all relevant existing documents. The reason for this is because, also an annexure (e.g. a list of rendered supplies), might provide a sufficient binding link between the invoice documents where an explicit reference, in terms of sec. 31 of the German VAT Implementation Code, has not been made. In these cases, the unambiguous reference between the invoice documents derives from the factual connection. In this instance, it is not necessary to correct the invoice.