



VAT NEWSLETTER

## Invoices: Federal Fiscal Court decides on the description for goods in the low-price segment

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### 1 Background

Proper invoices and the deduction of input VAT continue to be a frequent target of VAT audits. According to Article 14 (4) German VAT Act, invoices have to include the specification of the goods or services received. In a parenthesis, the law refers to the required description as "customary trade description". The authorities and also some courts often require that the description must allow individual identification of the goods or services. In the absence of an exhaustive description of the specific supply provided, the invoice will be rejected and, as a result, the input VAT deduction will be denied. Alternatively, by referring to inadequate descriptions, the auditor questions whether in fact a taxable supply was ever actually delivered. This results in a VAT liability arising in accordance with Art. 203 VAT Directive. The invoice recipient cannot claim the input VAT.

Particularly in the so-called "low-price segment", invoices often show only the category of what was supplied. Typically, these invoices only contain limited descriptions such as "T-shirts", "trousers" or "mobile phone cover", without any size or model information. Some of the invoices even contain the same descriptions for all items, which only differ in terms of quantity and price. Such documents often lead to legal disputes as to whether the description is customary.

### 2 Facts

Both judgements are based on typical facts. The plaintiffs traded in clothing (Ref: XI R 28/18) and in fashion jewellery and accessories (Ref: XI R 2/18) in the low-price sector. The invoices for goods received only contained generic descriptions such as "T-shirt", "trousers", "necklace" or "mobile phone accessories". In both cases, the tax office refused to allow input VAT deduction due to allegedly insufficient specifications. The lawsuits brought before the Hessian Tax Court against this



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were unsuccessful. The mere specification of a category was held by the Court not to constitute a customary description. For a sufficient description of the supply in a proper invoice, a description of the nature of the goods, which makes them clearly identifiable, was necessary. Even in the low-price sector, resale to final consumers is also realized after exhibition or fitting. According to the court, this necessitates sorting according to model types and sizes, as it would not be in the interest of a trader to take the risk of receiving an almost unlimited quantity of the same product in the same size or model. It is therefore not commercial practice to purchase large quantities of products with a size or model type which cannot be verified in any way by the invoice.

The applicants argued that the legal purpose of the "customary description" was not to identify individual products. Furthermore, they argued that the law wrongly took into account the customary practice in retail trade, whereas the designations of the wholesale trade were to be taken as the basis. According to that provision, it was self-evident that, in the case of deliveries from a wholesaler, the goods would be supplied in a balanced proportion of sizes or models. The specification of services was therefore customary.

### 3 Decision

The Federal Fiscal Court clarifies that the invoice details also serve to exclude multiple invoicing of the same supply as part of their control purpose. However, according to national law, the "customary trade description" of the delivered goods is sufficient as an indication of the type of goods delivered. An "exhaustive description" of the goods and services actually rendered is not required. With the parenthesis "customary trade description", Art. 14 (4) sentence 1 no. 5 UStG refers to accounting practices among traders. Purchasers must inspect the delivered goods and notify the seller of any defects without delay, otherwise the delivered goods are deemed to be approved (Art. 377 para. 2 German Commercial Code). Furthermore, Article 226 of the VAT Directive makes no corresponding reference to commercial practice. Member States are therefore not permitted to make the deduction of input VAT dependent on additional conditions that go beyond the requirements of Union law. Thus, any specification of supplies which falls under the definition of "quantity and nature of the goods supplied" in Union law is sufficient. The Court also states that entrepreneurs can invoke the commercial practice of the description of supplies. The national "auxiliary provision" of the customary description, which is favourable to the trader, takes precedence over Union law.

### 4 Practical consequences

The decision is business-friendly and therefore very welcome. Anyone who constantly buys a large number of different items in the low-price segment will receive invoices that only contain generic descriptions. In this respect, the decisions lead to considerably more legal certainty. They also make it clear that those concerned can maintain their business processes. Retailers do not have to adapt their terms if the legislator expressly allows customary commercial descriptions to suffice. This is an enormous relief.

The most important conclusion to be drawn from the judgments is the possibility of referring to commercial practices. The statements of the Federal Fiscal Court are not limited to the low-price segment and are therefore of importance for all entrepreneurs. From now on the following must apply: What is usually accepted among merchants as a description of goods and services rendered is sufficient for the purposes of input VAT deduction as regards the customary commercial description of what was supplied. In the event of a dispute, the tax authorities can be countered with the judgment argumentation. To this end, traders should retain evidence of the commercial customary nature of the specification used.