



# KMLZ VAT NEWSLETTER

## European Court of Justice comments once again on VAT deduction following invoice correction

### 1. Background

The Belgian company *Petroma Transports SA* charged personnel services to affiliates on the basis of hours worked. The Belgian tax authorities denied VAT deduction by arguing that the invoices were incomplete and that it was impossible to determine if the services have actually been carried out. Most of the invoices did neither show the hourly rate nor the number of personnel but only showed a total amount instead. According to the tax authorities, this prevents the inspection of precise charging of VAT. Documents that were handed in later were not accepted by the Belgian tax authorities on the grounds that these documents were handed in too late – after the conduction of the VAT audit and the administrative decision on the denial of VAT deduction.

### 2. Decisions by the ECJ

The ECJ had to decide on VAT deduction after the correction of a faulty invoice in its decision of 8 May 2013 (legal case

### Invoice corrections leading to a VAT trap?

In its latest judgment, the European Court of Justice (ECJ) comments on the legal case *Petroma Transports and others* regarding the question of VAT deduction following an invoice correction. According to the ECJ's statements, invoice corrections have to be transmitted to the responsible tax office before decisions on denying VAT deduction are being made. It could be interpreted that VAT deduction with retroactive effect should be possible. Therefore, entrepreneurs are forced to take action by having invoices corrected properly and quickly as well as transmitting the corrected invoices to the tax authorities in time.

C-271/12 – *Petroma Transports and others*). VAT deduction can be denied if the entrepreneur owns incomplete invoices even though they are completed by submitting information that prove the actual existence, type and amount of charged supplies after such a negative decision. The ECJ states in its latest decision that the common system of VAT does not prohibit the correction of faulty invoices and refers to para 34 regarding time of VAT deduction after correction of these invoices. If the tax authorities receive corrected invoices before making a decision on VAT deduction and if all the substantive conditions necessary are met, VAT deduction cannot be denied by arguing that the original invoices were faulty. The ECJ also refers to para 43 – 45 of the decision in legal case *Pannon Gép* of 15 July 2010 (C-368/09). In this decision, the ECJ had already stated that VAT deduction can be granted after receiving the original incomplete invoice if the tax authorities already own a corrected invoice by the time of the



negative administrative decision. After the decision in legal case *Pannon Gép*, the German tax authorities commented on the question of the time of effect of an invoice correction (Federal Ministry of Finance's circular of 16 March 2011). They made clear that the ECJ (in its decision of 15 July 2010) did not decide that invoice correction have retroactive effect on the time of the original receipt of the invoice.

### 3. Conclusion

Ultimately, the ECJ remains true to its policy regarding the question of the time of VAT deduction for a corrected invoice in the latest decision of 8 May 2013. VAT deduction from a faulty invoice should always be granted if the tax authorities own the corrected invoice before making the negative administrative decision.

### 4. Consequences for the practice

Entrepreneurs are obliged to criticize faulty invoices and demand corrected invoices by means of complementary documents. It is inevitable that faulty invoices are only complemented by missing information. This can be done by either submitting an additional document or providing missing information on the original invoice. A cancellation invoice and a new invoice lead to the loss of the right to deduct VAT as the original invoice loses its existence. Only the issuer of an invoice is entitled to correct the invoice.

If an entrepreneur issued self billing invoices, faulty self billing invoices are to be corrected and transmitted to the addressee of the recipient of said self billing invoices. The successful delivery is essential for an effective correction.

Corrected invoices have to be archived separately especially with regard to impending audits and special VAT audits. If VAT deduction is denied in an audit due to faulty invoices, these invoices should be – according to the ECJ's decision – transmitted immediately to the tax office responsible for the decree of VAT assessments. In our understanding, it is not enough to hand these faulty invoices to the auditor as the tax office is responsible for the VAT assessment. Otherwise, VAT deduction with retroactive effect will not be possible.

If the tax authorities deny retroactive VAT deduction, the amended VAT assessment should be kept open until there is a high court decision. Proceedings concerning this matter are pending at Senate XI of the Federal Fiscal Court.

Parallel to this, one should always make an application for granting VAT deduction in what is also known as the equity-based process according to sec. 163 of the General German Fiscal Code.