



# KMLZ VAT NEWSLETTER

## The German Federal Fiscal Court tightens the requirements for invoices

### 1. Problem

According to sec 14, para 4, no 1 of the German VAT Act, entrepreneurs are required to state the full name and the full address of the supplier and the customer of the supply. If any of this information is missing, the customer cannot deduct input VAT. The question is if the term "full address" also includes the mere "mailbox address" (in particular, the P.O. box or the postcode and locality) of the parties. Currently the German tax authorities accept invoices which only provide the customer's P.O. box or the customer's postcode and locality (sec 14.5, para 2, sentence 3 of the German VAT Circular).

In a recent judgement, the German Federal Fiscal Court denied the deduction of input VAT from invoices that contained only the supplier's "mailbox address". In doing so, the Court expressly dissociated itself from the German tax authority's opinion and, to some extent, also from its own previous jurisprudence.

### P.O. box address is insufficient

In a decision which had been given little attention up to now, the Federal Fiscal Court tightened the requirements for the deduction of input VAT from invoices. The Court held that taxable persons cannot deduct input VAT from invoices only showing the supplier's P.O. box address. In this context, the Federal Fiscal Court indicated that this reasoning is also applicable in cases where the P.O. box address of the recipient of the supply is stated on the invoice. The judgement may have far-reaching effects, in particular for German companies.

### 2. Facts

The plaintiff claimed deduction of input VAT from invoices. The invoices merely provided the supplier's mailbox address. This mailbox belonged to the counselling centre of an income tax assistance association and an accounting company. They received the supplier's mail. Furthermore, they carried out accounting services for the supplier. The supplier did not "develop" its own business activities there. The premises of the supplier were located at another address.

### 3. Judgement of the German Federal Fiscal Court of 22 July 2015 - V R 23/14

The German Federal Fiscal Court denied the plaintiff's input VAT deduction from the supplier's invoices. The German Federal Fiscal Court held that the requirement of a "full address", according to sec 14 para 4 no 1 of the German VAT Act, was not satisfied.



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"Full address" refers to the place where the supplier carries out its business activities. The German tax authorities can only clearly and easily verify the constituent fact of the "full address" if the registered seat of the supplier indicated in the invoice did actually exist at the time the supply was carried out and at the time the invoice was issued. For this purpose, it is not sufficient to indicate an address where no business activities were carried out at the time the invoice was issued.

In this context, the German Federal Fiscal Court points out that its opinion and that of the German tax authorities deviate with regard to the use of the customer's P.O. box according to sec 14.5 para 2 sentence 3 of the German VAT Circular. Furthermore, the Court clarifies that it does not abide by its statement in a former judgement according to which a "mailbox seat" may be sufficient (judgement of 19 April 2007 – V R 48/04, Federal Tax Gazette II 2009, 315).

#### 4. Conclusion

Tax auditors might take the Court's decision as a reason to deny input VAT deduction due to insufficient provision of postal information on the respective invoices. This should apply for both addresses, i.e. the supplier's as well the customer's. The reason being that, the German Federal Fiscal Court notes that the German tax authorities' interpretation of the requirement of a "full address" with regard to a customer's address, is different from its own interpretation. Thereby, the German Federal Fiscal Court clearly indicates that, from the Court's point of view, it is not sufficient that the customer's P.O. box or the customer's postcode and locality are indicated on the invoice.

The German tax authorities could take this statement as a "broad hint" and abolish sec 14.5 para 2 sentence 3 of the German VAT Circular. This would have to be observed in every future issuance of invoices.

Protection of legitimate expectations is granted for the past according to sec 176 para 1 no 3 of the German General Fiscal Code. However, this only applies for tax periods for which the taxable person already filed an annual VAT return. This protective effect does not apply if only the monthly/quarterly VAT returns have been submitted.

Currently, the German tax authorities accept invoices that only provide the customer's P.O. box or the customer's postcode and locality. Should sec 14.5 para 2 sentence 3 of the German VAT Circular be abolished, the tax authorities will probably issue a non-objection regulation for the past, for reasons of protection of legitimate expectation. Nevertheless, companies which receive invoices via a P.O. box or a postcode and locality should now take steps to verify whether the invoicing address can be proactively adjusted to accord with the German Federal Fiscal Court's decision.

The German Federal Fiscal Court will shortly have the opportunity to deal with this matter again. In its judgement of 28 April 2015 (reference number: 10 K 3803/13), the Tax Court of Cologne granted the deduction of input VAT from invoices showing the supplier's "mailbox seat". The Tax Court based its decision on the premise of technical evolution and changed business practices. In addition, the Court considered the criterion of "business activities" as being too vague. The Tax Court of Cologne allowed the appeal to the Federal Fiscal Court (reference number: V R 25/15).