



## Federal Fiscal Court: Postal address on invoice permitted – no bad faith despite domicile address

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### 1 Facts

In the judgement V R 28/16, a limited liability company (hereinafter "M") delivered scrap to the plaintiff. M issued invoices to the plaintiff for the scrap supplies showing VAT. The address used for M on the invoices was the address of a law firm. This law firm served as a domicile address for between 15 and 20 other companies. For the purposes of its correspondence, M used the law firm's landline, fax numbers and a mobile phone number. M did not have any workspace at the address nor did it keep any of its documents there. Members of M's management team used a desk at the premises when they visited the location once a month, bringing their own laptop with them. M did not own any trucks or have employees, nor did it have any warehouse facilities there. In response to a request from the plaintiff, M's tax consultant confirmed that M had properly taxed its supplies. In actual fact, M did not report the supplies of the scrap to PI to the tax authorities. The tax office subsequently reduced the input VAT deduction for the plaintiff.

In the judgement V R 25/15, the plaintiff deducted input VAT from the invoices of Z. Z sold vehicles online. Z rented premises but did not run a car dealership there. A company sign with the imprint "Z" was attached to the building. Post for Z was also received there, although it is unclear whether there was a letterbox. Z's vehicles were handed over to the plaintiff in public places.

### 2 Federal Fiscal Court follows ECJ: Postal address is sufficient

The German Federal Fiscal Court follows the jurisprudence of the European Court of Justice in the German legal cases *Geissel and Butin* (judgement of 15.11.2017, C-374/16 and C-375/16). In these cases the ECJ recognized that the term



Dr. Thomas Streit, LL.M. Eur.  
Lawyer

+49 (0) 89 217 50 12-75  
thomas.streit@kmlz.de

"address" on an invoice does not require that the supplier carry out economic activities at this location (see KMLZ Newsletter 38 I 2017). Rather, any kind of address is sufficient, provided that the supplier can be reached at this address. This was the case in both proceedings. Therefore, the invoices were formally correct.

### 3 No knowledge or facts indicating a party "should have known" despite domicile address

In the scrap dealer case (V R 28/16), the input VAT deduction did not fail due to any bad faith on the part of the plaintiff. There was an act of tax evasion in the supply chain, but this was harmless in terms of the plaintiff's input VAT deduction. The Fiscal Court found that the plaintiff's tax office failed to prove the plaintiff had any knowledge of actual tax evasion. There was also no factual evidence or other indications on the basis of which the plaintiff should have taken further control measures. Among other things, the following aspects of the cases should be taken into account:

- The criminal proceedings against the plaintiff's managing directors were terminated in accordance with sec 170 para 2 Criminal Procedure Code.
- Initial contact by phone and verbal agreements are common practice in the scrap industry.
- The plaintiff was entitled to trust the information provided to it by M's tax consultant. In any case, the plaintiff would not have received any further information concerning M from the tax office, due to tax secrecy.
- In contrast to the tax authorities, further rights to intervene in order to check up on contract partners are not available to taxpayers.
- The transactions were conducted without cash.
- The entry in the commercial register did not give rise to any need for further research. The law firm's address was registered as M's address. The company's purpose was the metal waste trade.
- The use of vehicles with Hungarian license plates driven by Hungarian drivers for the transport of the scrap did not lead to any conclusion of bad faith. Hungary is a member of the EU and therefore freedom of movement of persons and goods applies.
- Purchases from M only accounted for 0.3 % of the plaintiff's purchase values.
- The plaintiff and its managing directors have not yet been punished for tax purposes.

### 4 Consequences for the practice

The purpose of stating the address on an invoice is fulfilled if the entrepreneur can actually be reached at this address. These decisions make VAT law a little more practicable. The German Federal Fiscal Court has decided this in the case of the supplier's address. Ultimately, no additional requirements can apply to the recipient's address (as stipulated in sec 14.5 para 2 sentence 3 German VAT Circular). This decision is also likely to be decisive for the indication of the address in the proof for intra-Community supplies in accordance with sec 17a German VAT Implementation Code.

In many cases, entrepreneurs are accused of bad faith. The present scrap dealer case clearly shows that the authority's accusation alone is not enough: Proof is required. Thus, in an older case, the Fiscal Court in Munich already correctly decided that even "a multitude of unusual circumstances" does not replace the need to supply proof of bad faith. The fact that there is a domicile address at the supplier's side does not lead to bad faith on the part of the recipient and does not give rise to any further inspection commitment on his or her behalf. With regard to the VAT exemption of intra-Community supplies or the liability according to Sec. 25d of the German VAT Act, nothing additional can apply.