



VAT NEWSLETTER

ECJ: Input VAT deduction only with invoice but without need for minimum mandatory information?

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1 Background

The ECJ has already, on several occasions in the past, dealt with the significance of an invoice for the input VAT deduction. In the cases *Senatex* (C-518/14) and *Barlis* (C-516/14), it has relaxed the requirements for an invoice entitling for an input VAT deduction in favor of the taxable person, particularly if any information is incorrect or missing. In its subsequent decision in *Vădan* (C-664/16) it could be concluded that the submission of invoices is not even mandatory for the input VAT deduction. In its current decision of 21.10.2021 in the case *Wilo Salmson* (C80/20), the ECJ once again comments on the concept of an invoice.

2 Facts of the case and questions referred

In 2012, the plaintiff, based in France, purchased production equipment from a Romanian company and received invoices with Romanian VAT. The plaintiff applied twice for a refund of the input VAT invoiced to it using the special input VAT refund procedure according to Council Directive 2008/9/EC. The application was first rejected on the grounds that the documents submitted did not comply with the legal requirements. On the second occasion the application was rejected because the input VAT concerned the wrong VAT period, and a refund had already been applied for without success. In summary, the referring court wanted to know what the applicable time for the refund of VAT to the applicant actually was.

3 Decision

The ECJ ruled that the right of input VAT deduction has to be claimed at the time when the taxable person first comes into possession of an invoice within the meaning of the VAT Directive. There is no right of choice in this regard. The right to



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deduct input VAT cannot be exercised in a later taxation period in which the supplier cancels a (proper) invoice for the supply and again issues an invoice without having a reason to do so.

The ECJ thus makes on first sight the possession of an invoice mandatory for the exercise of the right to deduct input VAT. This being the case, the ECJ also makes clear that the deduction of input VAT from an invoice may not be denied if the VAT arose in an earlier taxable period and only the invoice was received later. However, the ECJ also ruled that a document does not constitute such an invoice only if it is so flawed that the national tax administration lacks the information necessary to substantiate a refund claim. The basic principle of neutrality of VAT requires that input VAT deduction be granted if the substantive requirements are met. This applies even if the taxable person has not met certain formal requirements. The situation is only different if the breach of the formal requirements has prevented adequate proof being collected that the substantive requirements have been met.

4 Consequences for the practice

The claim for input VAT deduction from a purchase transaction can therefore only be asserted in the period in which the taxable person first comes into possession of an invoice in relation to the purchase. However, the crucial question for practice remains: when is a document so incomplete / incorrect that it no longer constitutes an invoice? Unfortunately, the ECJ did not comment on this. The ECJ also did not include in its ruling the minimum mandatory information (stipulated by the German Federal Fiscal Court) from the opinion of the German advocate general. It is therefore more than conceivable that the ECJ indirectly wishes to say that there are and can be no minimum mandatory information for invoices. If the administration is in possession of the information necessary to establish that the taxable person is liable for the VAT, it may not lay down additional conditions that may limit the exercise of the right to deduct. This also applies if any details are missing from or are incorrect in the invoice but can easily be added or calculated. For example, the right to deduct input VAT might not be denied if the invoice states that it is a local supply, the taxable amount is present, but the amount of VAT is missing. This can easily be calculated.

What is important in practice, however, is the rather clear statement of the court that one cannot re-select the period of the input VAT deduction entitlement by cancelling and reissuing invoices without any valid reason. Taxable persons must not fail to claim all invoices within time in the correct period, especially in the special input VAT refund procedure that is subject to a time limit. The right tax period needs to be found for each individual document. This applies especially for the documents where the information on the respective receipts transpires to be not complete.

All things considered it however should not go unmentioned that the ECJ has ruled on questions regarding the possession of an invoice in the special input VAT refund procedure according to Council Directive 2008/9/EC. On the one hand, it can be argued that the statements are not directly transferable to the input VAT deduction entitlement in the regular taxation procedure, as the ECJ partly comments on other norms in the VAT Directive. On the other hand, the formal requirements in the special input VAT refund procedure are even stricter than in the regular taxation procedure. If the ECJ has such a broad understanding of the term "invoice" for the special input VAT refund procedure, then the decision should also be relevant for the regular taxation procedure.