



KMLZ VAT NEWSLETTER

ECJ: Postal address on invoice is sufficient

On 06.04.2016, the two VAT Senates of the Federal Fiscal Court referred two cases to the ECJ for a preliminary ruling (V R 25/15 and XI R 20/14). Both Senates wanted to know whether the necessary postal information, which must be stated on an invoice, i.e. the “full address” in accordance with sec 14 para 4 No 1 of the German VAT Act, Art. 226 No 5 of the VAT Directive, requires the invoice address to correspond with the address where the issuer of the invoice carries out its economic activity. Whereas the Fifth Senate considered the address of an economic activity to be necessary, the Eleventh Senate considered a postal address to be sufficient.

1. Facts

The Plaintiffs, in both proceedings, operate in the automobile trade industry. Both claimed input VAT deductions from incoming invoices in which the suppliers merely stated their respective postal addresses. The tax office denied input VAT deduction on the grounds that the necessary information “full address” was missing from the invoices. The address, where the issuer of an invoice carries out its economic activity, was considered by the tax office, to be deci-

ECJ abandons formalism re addresses

In its decision of 15.11.2017 in the legal cases *Geissel* and *Butin* – C-374/16 and C-375/16, the ECJ held that the address, where the issuer of an invoice carries out its economic activity, does not have to be specified in the invoice for the purpose of input VAT deduction. In the ECJ's view, it is sufficient that the postal address used in the invoices is an address at which the supplier is contactable. This is a clear rejection by the ECJ of the rather narrow German point of view. The decision is also important as regards the recipient's address.

sive. The two competent tax courts held different views. Thus, the Federal Fiscal Court referred, to the ECJ, the question as to whether an “address” means the address where the issuer of the invoice carries out its economic activity. If the ECJ's answer was affirmative, it wanted to know whether “good faith” must be taken into consideration in the course of the assessment procedure and whether the equitable procedure, in accordance with secs 163, 227 of the German Fiscal Code, was sufficient.

2. Reasons for decision

In the ECJ's view, the concept of “address” does not require that the issuer of the invoice carries out any economic activities there. The postal address, where the issuer of the invoice can be reached by mail, is sufficient as an indication of address.

Based on its interpretation of the wording, the ECJ clarified, that the concept of “address” covered any kind of address, including a postal address. It is not possible for Member States to lay down more stringent requirements than those



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in the VAT Directive. With reference to the *Senatex* decision (C-518/14), the ECJ held that an invoice was merely a formal condition of the right to deduct VAT, rather than a material condition. It follows that the detailed rules regarding the indication of an address cannot be a decisive condition for the purposes of the deduction of VAT.

Taking into consideration the purpose of Art. 226 No 5 of the VAT Directive, the ECJ held that the aim of the requirement of an address for the issuer of an invoice was to identify the said issuer of that invoice. Thus enabling the tax authorities to carry out the necessary checks to determine whether the deducted VAT amount was reported in the supplier's VAT return and whether it was ultimately paid. The essential piece of information was the supplier's VAT-ID-No. This number is easily verifiable by the tax authorities and is obtained only in the course of a strict registration procedure. In contrast, the importance of a postal address is of secondary importance.

Finally, the ECJ points to the principles developed in the course of its deliberations concerning its decision of C-277/14 *PPUH Stehcemp*, according to which, as regards input VAT deduction, it is irrelevant if the supplying taxable person is qualified as a non-existent trader provided the recipient acted in good faith. Also in this case, the supplier had not carried out any economic activity at the specified address.

The additional question referred to the court as to whether the fact that, in Germany, good faith as regards input VAT deduction is merely granted in the course of the equitable

procedure in accordance with sec 163, 227 of the German Fiscal Code, rather than in the course of the assessment procedure, violates Union law, remained unanswered by the ECJ.

3. Consequences for the practice

The ECJ decision is practical and also convincing in terms of content. The ECJ upholds its view, which it clearly expressed in the decisions *Senatex* (C-518/14) and *Barlis 06* (C-516/14): Turning away from formal conditions and strengthening substantive law.

It is a widespread practice that companies use PO Box addresses etc., also as invoice addresses. Based on the ECJ decision, companies may continue this practice.

Further, the increasing importance of digitalization is leading to the dematerialization of a great number of business administrative activities. Determining the place of economic activity precisely might no longer be terribly easy in many cases and will not be necessary for the purposes of invoicing in the future.

The ECJ decided on the supplier's address. The same reasoning will undoubtedly also apply to the address of the issuer of the invoice and the recipient's address. There is no apparent reason why these addresses should be treated differently. The tax authority has previously held that purely indicating a post box address is sufficient (see sec 14.5 para 2 sentence 3 of the German VAT Circular). Now, national case law will have to give way to this view.