



Invoices: Federal Ministry of Finance on requirement of „customary trade description“

1 Background

Proper invoices, and the deduction of input VAT dependent thereon are a frequent target of VAT audits. According to Art. 14 (4) sentence 1 no. 5 of the German VAT Act, invoices must include the specification of the goods or services received. The law refers (in parenthesis) to the required description as a "customary trade description". At times, both the authorities and some courts have required that the description of services must be exhaustive and allow for the individual identification of goods. If, for instance, only generic terms such as "watches," "trousers," or "mobile phone covers" are used, in the absence of any size or model information, this often leads to legal disputes with the tax authorities.

In 2019, the German Federal Fiscal Court decided (Ref: XI R 28/18 and XI R 2/18) that the parenthesis in Art. 14 (4) sentence 1 no. 5 of the German VAT Act refers to accounting practices among traders. If a term chosen does not meet the definition of "indication of the type", it nevertheless satisfies the requirements for the description if it represents a customary commercial designation. An exhaustive description of the goods supplied is not required. Traders can invoke the national auxiliary provision of the description being customary in trade (KMLZ VAT Newsletter 01 | 2020). In the judgment case, mere generic terms such as "T-shirts", "trousers", etc. were recognized as customary designations.

2 Letter of the Federal Ministry of Finance of 1 December 2021

For the purposes of the "customary trade description", the German Federal Ministry of Finance has adopted the principles of the Federal Fiscal Court case law and adapted sec. 14.5 (15) and sec. 15.2a (4) of the German VAT Circular. The simplification introduced by the parenthetical addition of "customary trade description" in Art. 14 (4) sentence 1 no. 5 of



Dr. Markus Müller, LL.M.
Steuerberater,
Dipl.-Finanzwirt (FH)

+49 (0) 211 54 095-387
markus.mueller@kmlz.de

the German VAT Act refers exclusively to the type of goods supplied. However, it does not apply to the quantity of goods supplied or to services. In the opinion of the tax authorities, it is not possible to make general statements as to when a designation is to be regarded as customary in the trade. This must be examined on a case-by-case basis.

In case of doubt, the trader requesting the input VAT deduction is obliged to prove that a description used in the invoice, e.g., a mere generic designation, is customary in the trade. The assessment of the customary description considers the level of trade, the type and content of the supply, and the value of the goods supplied. However, in the opinion of the Federal Ministry of Finance, a mere generic designation for goods from the higher-price segment – in contrast to low-priced goods – does not constitute a customary trade designation.

In the case of services, the information must facilitate clear identification of the supply provided. Therefore, the scope and nature of the service provided must be specified without having to provide an exhaustive description. General statements such as "consulting services" and "construction work" are not sufficient in and of themselves, as they do not fulfill the necessary control function of the invoice - the payment of the VAT due and the existence of the right to deduct input VAT.

3 Consequences for the practice

The update of the German VAT Circular is to be welcomed, as this business-friendly judgment of the Federal Fiscal Court is implemented. From now on, the following applies: What is usually accepted among merchants as a description of goods and services rendered is sufficient for the purposes of input VAT deduction as regards the customary commercial description of what was supplied. Retailers are not required to adapt their terms.

Although it is primarily traders in the low-price segment, which regularly receive invoices that only contain generic terms, the national "auxiliary provision" of the customary designation is not limited to the low-price segment and is therefore of importance for all traders. However, the Federal Ministry of Finance's letter indicates that mere generic designations are only to be accepted in the low-price sector. Thus, the description will remain a hot topic. In the event of a dispute with the fiscal authorities, it is recommended that reference be made to the merchantability of the terms.

The tax authorities do not provide any information on how a trader can prove merchantability in a legally secure manner. The taxpayer bears the burden of proof. It is obvious that the necessary proof of the customary nature at the respective level of trade can be based on similar documents. But beware: In doing this, the auditor may be served further invoices on a silver platter that could be the subject of dispute.

The Federal Ministry of Finance's letter makes no reference to invoice corrections. It therefore remains unclear as to when a specification will merely be erroneous or when it is so vague that it is considered to be completely missing. This distinction is of great importance for the purposes of the retroactive effect of invoice corrections. For example, the service description "consultancy" in a lawyer's invoice may not constitute a proper service description, unless an objective proof can be provided. However, according to administrative opinion, such description is merely erroneous and can therefore be corrected with retroactive effect for VAT purposes. If it is not possible to prove that the terms used are customary in the trade, traders should examine the possibility of a retroactive invoice correction in the event of a dispute.

The letter is to be applied in all open cases. The tax authorities can thus also be countered for past taxation periods with the customary nature of the description. Traders should keep appropriate evidence for this purpose.