



VAT NEWSLETTER

Federal Fiscal Court strengthens its restrictive opinion regarding retroactive invoice correction

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1 Facts

The German Federal Fiscal Court (Judgement of 12.03.2020 - V R 48/17) ruled on the following facts: The plaintiff deducted input VAT from an invoice document dated 07.12.2005, referred to as a credit note. The subject of the invoice was described as "*Transfer Sum November 2005*". As an attachment, the plaintiff submitted an "Accounting Report" in which the net sales from the software products sold appeared as one amount under "Sales Products". After an internal audit, the plaintiff resubmitted the credit note on April 26, 2011. This time, a list of the acquired software was attached (correction attempt). Subsequently, the plaintiff submitted a corrected VAT return in which an input VAT deduction was no longer claimed and filed an appeal against this return. The plaintiff claimed a retroactive correction of the credit note for the year in dispute (2005). The tax office rejected the appeal as unfounded. The Fiscal Court, on the other hand, considered that the plaintiff was entitled to correct the imprecise service specification with retroactive effect to the year in dispute. The German Federal Fiscal Court subsequently overturned the decision of the Fiscal Court and dismissed the first instance judgement. The Fiscal Court was found to have incorrectly affirmed the conditions for a retroactive invoice correction and thus the deduction of input VAT from the credit note of 07.12.2005 for the year in dispute.

2 Opinion of the Federal Fiscal Court

According to the German Federal Fiscal Court, the initial credit note was not an invoice within the meaning of Section 14 of the German VAT Act. Therefore, a retroactive correction - reserved for invoices falling within the definition of Section 14 German VAT Act only - was not possible in the present case. The service specification required under Section 14 (4) sentence 1 No. 5 of the German VAT Act was lacking. This is a minimum requirement for the existence of an invoice. Thus, the credit note merely constituted an accounting document and therefore could not be retroactively



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corrected (see in general KMLZ Newsletter 01 | 2017). Pursuant to Section 14 (4) sentence 1 No. 5 of the German VAT Act, the type and quantity of the goods supplied or the scope and nature of the supply of services must be stated in the service specification. The German Federal Fiscal Court concluded from this that an invoice must contain information of a factual nature, which identifies the invoiced supplies. The invoiced supply must be clearly and easily verifiable by reference to the specification in the invoice. The concrete requirements for the specification depend on the individual case. A lack of specification exists if the information is highly undefined, incomplete or obviously incorrect. This is the case if the information does not contain any indication of the type of supplies. The phrase "Transfer Sum November 2005" is so indefinite that it is equivalent to a missing specification. It does not provide any indication of the nature of the supplies, i.e. whether they consisted of physical items, intangible items or a supply of services. Further, no indication of the quantity of the products was provided.

Neither the information contained in the attached accounting report ("product sales") provided by the taxpayer, nor the further circumstances of which the tax authorities were aware, served to dispel this indeterminacy. This was the case, despite the requirement of the German Federal Fiscal Court (see KMLZ Newsletter 27 | 2016 and 24 | 2018) that these additional factors have to be considered by the tax authorities on the basis of the ECJ's judgement *Barlis 06* of 15.09.2016 (C-516/14). In addition, contrary to many voices in current literature (see KMLZ Newsletter 50 | 2018), the German Federal Fiscal Court states that the ECJ judgement *Vădan* of 21.11.2018 (C-664/16), does not make any statements on the dispensability of an invoice or an invoice's contents. Rather, the ECJ judgement confirms the significance of an invoice or other accounting documents for the right to deduct input VAT.

3 Consequences for the practice

The judgment of the German Federal Fiscal Court is highly significant. In accordance with its previous jurisdiction, and contrary to many voices in current literature concerning the ECJ judgement *Vădan*, the German Federal Fiscal Court assumes that an invoice is a mandatory requirement for the deduction of input VAT. Moreover, it adheres to the restrictive understanding that not every billing document constitutes an invoice. A correctable invoice only exists if a document contains information on the issuer of the invoice, the recipient, the specification of the supply, remuneration and a separate VAT statement on the invoice. On the basis of the specification, it must be possible to identify the supply being invoiced. A lack of specification will be found in the instance where a completely undefined phrase, from which no specific supply can be derived, is used. A retroactive correction is then excluded. The criteria for the demarcation between a sufficiently concretized - and thus "correctable" - specification on the one hand, and one which is too abstract - and thus "uncorrectable" - on the other hand, remains unclear. This very question will be a regular source of controversy in future tax audits. Thus, particular attention must be paid to service specification in the context of invoicing.

In instances where the tax authorities refuse to allow input VAT deduction in the case of where there is some degree of specification, albeit inadequate, it is essential to provide the additional information, which is necessary to identify the supply being invoiced. Against this background, it is encouraging that the German Federal Fiscal Court considers it to be sufficient, in the sense of *Barlis 06*, if the tax authority has at its disposal all of the information necessary to enable it to check whether the material conditions for exercising the right to deduct input VAT are met. Independent of this, a retroactive correction of the invoice is possible.