



## Federal Ministry of Finance letter on retroactive effect of invoice correction and deduction of input VAT without a proper invoice

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### 1 Background

Since the ECJ decisions of 15 September 2016 in the cases *Senatex* (C-518/14) and *Barlis 06* (C-514/16), several drafts of a Federal Ministry of Finance letter have been prepared on the retroactive effect of an invoice correction and on the deduction of input VAT without a proper invoice. However, due to the ongoing development in the case law, these drafts required repeated revision. The Federal Ministry of Finance finally published its letter on 18 September 2020.

### 2 Content of the Federal Ministry of Finance letter

The main contents of the Federal Ministry of Finance letter are as follows:

- **Distinction between formal and substantive conditions for input VAT deduction**

The Federal Ministry of Finance first distinguishes between formal and substantive requirements for the deduction of input VAT. From a substantive perspective, the taxable person must receive a supply from another taxable person which he uses for the purposes of his taxable output supplies. As regards the formal requirement, the taxable person should have available a proper invoice. However, already at this point, the Federal Ministry of Finance makes an exception: an invoice showing a VAT amount is also a substantive requirement. The reason: the indication of the VAT amount is essential for ensuring parity between the supplier's VAT liability and the recipient's input VAT deduction. The deduction of input VAT, in the absence of an invoice, is completely ruled out by the Federal Ministry of Finance.



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- **Input VAT deduction without proper invoice / objective evidence**

The invoice serves a controlling function. If an invoice does not fulfil all of the formal requirements and is not corrected, input VAT can still be deducted. Here, the recipient can provide objective proof by other means. According to the Federal Ministry of Finance, it is important that this evidence enables the administration to easily and unequivocally determine the conditions for the deduction of input VAT. Deduction shall not be allowed if any doubt exists in this respect. However, the Federal Ministry of Finance is stricter with regard to showing VAT: proof of the supplier's VAT liability can only be provided by submitting an invoice or a copy of it, showing a VAT amount. Otherwise, doubt remains as to whether VAT is included in the amount to be paid by the recipient.

- **Retroactive invoice correction – also through cancellation and reissue of the invoice**

If objective evidence cannot be provided in the case of an incorrect invoice, the recipient can submit a corrected invoice in accordance with sec. 31, para. 5 of the German VAT Implementation Code. It is also possible for the invoice issuer to cancel the original invoice and issue a new invoice. However, an invoice can only be corrected with retroactive effect if it contains the following five core characteristics: information on the issuer of the invoice, the recipient of the supply, the description of the supply, the remuneration and the separately shown VAT. It is sufficient if this information is contained in the incorrect invoice and is not so vague, incomplete or obviously incorrect that it is equivalent to missing information. The retroactive effect is to the advantage, as well as to the disadvantage, of the recipient (KMLZ VAT Newsletter 22/2020).

- **Subsequently showing VAT – retroactive effect also in instances of a reverse charge case**

If an invoice previously contained no tax or too little tax, the subsequent showing of VAT does not have any retroactive effect. Exception: If the invoice, in the instance of a presumed reverse charge case, indicates a transfer of VAT liability, the subsequent showing of VAT is retroactive. The Federal Ministry of Finance therefore allows the reference, that the VAT liability is transferred to the recipient on the incorrect initial invoice to suffice as an indication of the VAT amount.

- **Simplification during a calendar year**

If the correction of an invoice has retroactive effect there is no need to correct the VAT return within a taxation period. The simplification does not apply year-to-year.

- **Retroactive event within the meaning of sec. 175 para. 1 sentence 1 no. 2 of the German Fiscal Code**

The Federal Ministry of Finance does not consider the invoice correction to be a retroactive event in the sense of the German Fiscal Code. This point of view is in line with the draft Annual Tax Act (KMLZ VAT Newsletter 44/2020).

- **Temporary scope of application**

The Federal Ministry of Finance letter is to be applied to all open cases. However, in the case of invoice corrections transmitted by 31 December 2020, the previously applicable regulations may still be applied.

### 3 Conclusion

It is to be welcomed that there is now a Federal Ministry of Finance letter on this subject which implements the *Senatex* and *Barlis 06* case law, as well as other subsequent rulings, thereby offering guidance. However, doubts remain at EU-level concerning specific questions. In particular, the meaning of showing VAT on an invoice, the possibility of deducting VAT in the absence of an invoice and issues of procedural law.