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KMLZ VAT NEWSLETTER

Federal Fiscal Court: Missing information on time of supply can be concluded from the invoice date

1. Facts

During the relevant years, the Plaintiff claimed input VAT deduction with respect to the supply of vehicles. In the course of a tax audit, the tax office denied the input VAT deduction due to the fact that the supplier's tax number was not indicated on the invoice.

Following the tax audit, the Plaintiff requested amended invoices and presented them to the tax office. However, the tax office determined that the amended invoices did not have retroactive effect from the date of the original invoices. Thus, it denied the input VAT deduction for the relevant years.

In the subsequent appeal proceedings, it transpired that although the missing tax number had been added to the amended invoices, the invoices had another problem, namely that a sufficient description of the supply or the time of the supply was missing.

Federal Fiscal Court: Input VAT deduction despite missing time of supply

In practice, the time a supply takes place, is one of the most common pieces of mandatory information missing from invoices. According to the latest Federal Fiscal Court case law (decision of 01.03.2018, V R 18/17), this missing information may be concluded from the date of issue of the invoice. The prerequisite for this is that according to the circumstances of the respective case, it can be expected that the supply was rendered in the month the invoice was issued.

2. Federal Fiscal Court decision

In the Federal Fiscal Court's view, the missing information concerning the time of the supply may, in certain cases, be concluded from the invoice date. However, in such cases, it must be expected, according to the circumstances of the individual case, that the supply would also have been rendered in the same month that the supply was invoiced.

Here, the Federal Fiscal Court referred to sec 31 para 4 of the German VAT Implementation Code and interpreted it broadly and in favour of the Plaintiff. According to the Court, the calendar month, in which the supply was rendered, can also be specified as the date of the supply.

In its explanation, the Federal Fiscal Court referred to the ECJ judgement in the legal case *Barlis 06* (decision of 15.09.2016, C-516/14). According to the ECJ, the tax authorities should not limit themselves to checking the invoice itself. Rather, the authorities should take into consideration the additional information provided by the tax payer.



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As regards those amended invoices where the description of the supply was missing, the Federal Fiscal Court denied the input VAT deduction. According to the Court, the insufficient description of the supply in these cases could not be remedied, even after consultation of the supplementary documentation.

3. Conclusion

In its decision, the Federal Fiscal Court follows its recent case law as regards the retroactive effect of input VAT deduction (decision of 20.10.2016, V R 26/15). The Federal Fiscal Court is thus moving further away from the strict formal requirements for invoicing that have previously been applied.

The Federal Fiscal Court also repeatedly makes clear, that the tax authorities must not limit themselves to purely checking the invoice. When checking the right to deduct input VAT, the authorities must also consider all of the other documents and information they have at their disposal.

This decision can help taxable persons who may no longer be in a position to obtain a supplemented or amended invoice (e.g. in the case of the interim liquidation of the supplier). Where the taxable person, in such cases, is able to prove that the invoices, as a rule in his trade sector, are issued in direct connection to the supply (e.g. by presenting comparable invoices), input VAT deduction is to be granted despite the missing information on the time of the supply.

Yet, the time of the supply remains a mandatory invoice requirement for claiming input VAT deduction. If this mandatory information is missing, taxable persons are recommended to continue requesting amended invoices.

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