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By PwC Deutschland | 25. Mai 2011

Issuer liable for incorrect VAT shown on incomplete invoice

The Supreme Tax Court has held that the issuer of an apparent invoice is liable for the VAT shown thereon, even if the invoice is incomplete.

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A trader gave an unnumbered invoice to a customer showing a delivery, an amount and the VAT. However, no delivery was actually made. Accordingly, the invoice did not show a delivery date. The tax office maintained that the trader was liable for the VAT incorrectly shown on an invoice and demanded payment. The trader insisted that the invoice was incomplete in that it showed neither a delivery date nor a serial number, both of which are required for a valid document in support of an input tax deduction.

The Supreme Tax Court has now sided with the tax office. The term invoice is defined in terms of its minimum content in support of an input tax deduction, but not in terms of the liability of the issuer to pay the VAT shown. The liability in respect of a fictitious supply attaches to any document likely to be seen by the general public as an invoice, that is to any document appearing to be an invoice and showing the names of the parties, the nature of the supply, the amount due and the VAT thereon. As the court pointed out, the VAT liability of the issuer of an incorrect, or fictitious, invoice is a security measure in the defence against fraud and cannot be avoided by reference to provisions aimed at hindering the unjustified deduction of input tax. The two sets of provisions serve different objects and are subject to different conditions. The court also pointed out that the tax authorities cannot examine every input transaction and thus have to rely on output controls. Finally, it drew attention to the possibility of withdrawing an invoice, or issuing a corrected version, after the event as adequate protection for legitimate invoice issuers.

This case illustrates that care is needed in all cases of invoice issue in advance of the supply – draft invoices being cases in point – particularly if the ultimate supply is in any way doubtful.

Supreme Tax Court judgment V R 39/09 of February 17, 2011 published on May 25

Schlagwörter

incomplete invoice, issuer's liability