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By PwC Deutschland | 11. Juni 2018

Input VAT deduction available despite missing details on the date of supply

For the purposes of input VAT deduction, the necessary information about the tax point (the date of the supply) may be inferred from the date on which an invoice was issued, if it can be assumed that the service was provided in the month in which invoice was issued.

https://blogs.pwc.de/de/german-tax-and-legal-news/article/229855/

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The Supreme Tax Court also confirmed European Court of Justice case law, according to which a retroactive adjustment of the invoice reverts to the year of its issue.

In its decision of 1 March 2018, published on 6 June 2018, the Supreme Tax Court ruled on a number of questions.

Insufficient details of services performed

Firstly, it discussed the availability of an input VAT deduction in situations where there is an insufficient description of the services performed. The appellant had received invoices, which contained incorrect or insufficient descriptions of the services performed, such as “advertising costs as agreed”, “acquisition costs”, “transfer costs”. The Supreme Tax Court refused the input VAT deduction in this case, because it was not possible - from the descriptions - to identify the place of supply (and thus determine whether a taxable supply had occurred). Such an omission could not be rectified by a correction of the invoice or in fact in any other way.

Missing details on the date of supply

Secondly, the Court considered the tax point of the supply in connection with a motor car supplied to the appellant. The invoice provided to the appellant contained neither the VAT ID number nor information on the date of delivery. The invoice was later amended to include the VAT ID number but not the information on the date of delivery. The tax office refused to allow a input VAT deduction but this refusal was reversed by both the court of first instance and the Supreme Tax Court.

Section 14 (4) sentence 1 no. 6 of the VAT Act requires an invoice to state the date of the supply of goods or services. According to Section 31 (4) of the VAT Implementation Regulations (UStDV), the calendar month in which the service is performed can be specified as the time of supply of the goods or services.

In its decision, the Supreme Tax Court construed the requirement for the date of the supply very broadly and in a manner favourable to the taxpayer. As a result the tax point (the date of the supply) may be inferred from the date on which an invoice was issued, provided it can be assumed that in the individual case the supply was provided in the month in which the invoice was issued. In the case before the Court separate invoices were issued for single deliveries of vehicles and - as was customary in the industry - such supplies were accompanied by the invoice or were made directly before or after the issue of the invoice. Following the meaning of Section 31 (4) of the VAT Implementation Regulations therefore, the month of each of the supplies could be inferred from the date in the invoice.

Deduction of input tax has an effect on years of litigation

The Supreme Tax Court further held that the amendments made to those invoices by the appellant in 2011 effected the years 2005 and 2006. The Court was thus following the guidelines set out by the European Court of Justice (ECJ) in the past. Accordingly, invoices that contain missing or incorrect information may be corrected with retroactive effect for the date of the initial invoice (ECJ judgment Senatex of 15 September 2016 - C-518/14, and Surpeme Tax Court judgment of 20 October 2016 - VR 26 / 15). This should always

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apply where the invoice contains information on the issuer of the invoice, the recipient of the supply, the description of supply, the remuneration and the separately stated value added tax. In national law, this follows from section 31 (5) of the VAT Implementation Regulations which allows for a correction of the invoice until the end of the last oral proceedings before the tax court.

Source: Supreme Tax Court judgment of 1 March 2018 (V R 18/17), published on 6 June 2018

Schlagwörter

alteration of VAT invoices, date of supply/tax point, input VAT deduction