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ECJ to clarify invoice requirements for deduction of input VAT

An ECJ advocate general has suggested that the address of the issuer of an invoice must not be identical with the place from where he carries out his economic activity and that any type of address under which the supplier can effectively be contacted is sufficient.

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In two cases the Supreme Tax Court has asked the ECJ to rule on the invoice requirements which allow the deduction of input VAT. The input VAT deduction under the German VAT Act is conditional on possession of a proper invoice from the supplier. Under the Sixth Directive provisions the invoice must only show the supplier's name and full address and VAT identification number. The German tax office refused an input VAT deduction on the grounds that the supplier of cars "did not exist" or (in the second case) that there was merely a "letter box address".

The Supreme Tax Court considers its previous case law – namely requiring the address in the invoice to be the place where the issuer exercises its economic activity – may not be in line to a recent ECJ judgment of October 22, 2015 (C-277/14, *PPUH Stehcemp*) and has therefore referred the issue to the ECJ for clarification on 6 April 2016. In the case C-277/14 the ECJ has held that – in general – a customer holding an apparently valid supplier's invoice cannot be refused an input VAT deduction merely because of irregularities brought about by the supplier. The customer cannot be required to make checks that are not his responsibility. The question thus to be answered is whether (i) all formal invoice requirements must be fulfilled and (ii) the address from which the taxpayer carries out business activities need not be shown in the invoice. In other words: Is it sufficient that the taxable person making the supply gives an address by which he may be reached by post but where he does not carry out any economic activity?

The ECJ advocate general on the case has now suggested the court rule that Article 226 (5) of the VAT Directive precludes national legislation making the right to deduct input VAT dependent on an invoice indicating the address where the issuer carries out its economic activity; any type of address, including a so called "letter-box address" would be sufficient, provided that the person can in fact be contacted at that address. In order to correctly identify the issuer of the invoice it should not be necessary that the place of economic activities or the presence of the trader's business must be shown as the address in the invoice. In particular with regard to recent economic developments such as e. g. e-commerce, office sharing and teleworking. In light of this it is sometimes difficult to maintain that an economic activity is carried out from one particular place. For example, it is nowadays possible to run a business buying and selling goods on an internet platform from nearly anywhere in the world.

If the ECJ should nevertheless have a contrary view and hold that the formal invoice requirements are not fulfilled, the question of good faith arises, namely whether the deduction of input VAT is only possible when the taxable person has taken every measure that could reasonably be required of him in order to satisfy himself that the content of the invoice was correct. In such a case the advocate general suggests that such an interpretation would not be in line with EU VAT rules as it would, de facto, introduce a significant limitation of the right of deduction, which the VAT rules do not support.

The ECJ case reference is joint cases C-374/16 *Geissel* and C-375/16 *Butin* opinion of July 7, 2017.

Keywords

incomplete invoice, input VAT deduction, invoice requirements