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European Court of Justice: compulsory content of invoices for purpose of deduction of input VAT

On 15 November 2017 the European Court of Justice (ECJ) published its decision in the joined cases of Geissel and Butin ruling that Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (“the VAT Directive”) - Articles 168(a) and 178 (a) together with Article 226(5) - must be interpreted as precluding national legislation, which makes the exercise of the right to deduct input VAT subject to the condition that the address where the issuer of an invoice carries out its economic activity must be indicated on the invoice.

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In two separate cases, the German Supreme Tax Court referred to the ECJ the question whether, in order for a taxable person to be entitled to deduct input VAT, the relevant invoice will be considered to contain a “full address” within the meaning the VAT Directive (Articles 168(a) and 178 (a) together with Article 226(5) “the relevant Articles”) if, the invoice issued by the supplier only provides an address where the supplier may be reached by post but where he does not carry out any economic activity.

The cases related to two traders in motor vehicles who claimed input VAT on the basis of invoices issued, in the first case, by a “ghost company” which did not have any establishment at the address on its invoices and, in the second case, by a supplier with no fixed establishment in Germany, who used a “letterbox address” on his invoices.

Article 226 of the VAT Directive lists the details which must appear on such an invoice. Article 226(5) lays down, in particular, the requirement to indicate the full name and address of the taxable person and of the customer. The ECJ noted that the ordinary meaning of the term ‘address’ is broad and -referring to the Opinion of the Advocate General - the usual meaning of that term covers any type of address, including a ‘letterbox address’, provided that the person may be contacted at that address.

Moreover, so the ECJ, Article 226 of the VAT Directive states that, only the details mentioned in that article are required for VAT purposes on invoices issued pursuant to Article 220 of the VAT Directive. It followed therefore that the requirements relating to those details must be interpreted strictly since it is not possible for Member States to lay down more stringent requirements than those under the VAT Directive nor is it open to Member States to make the exercise of the right to deduct VAT dependent on compliance with conditions relating to the content of invoices which are not expressly laid down by the provisions of the VAT Directive (the Court also referred to the judgment of 15 September 2016, Barlis 06 — Investimentos Imobiliários e Turísticos, C?516/14)

Further referring to the earlier ECJ judgment of 15 September 2016, in Senatex, (C?518/14), the Court noted that the right to deduct VAT may not, in principle, be limited. According to that decision the deduction of input VAT must be allowed if the substantive requirements are satisfied, even if the taxable persons have failed to comply with certain formal conditions. Against this background, so the Court in the present cases, it must follow that the detailed rules regarding the indication of the address of the issuer of the invoice cannot be a decisive condition for the purposes of the deduction of VAT.

In addition consideration could be given to the purpose of the provision. The aim of indicating the address, name and VAT identification number of the issuer of the invoice is to make it possible for the tax authorities to establish a link between a particular economic transaction and a specific economic operator, i.e. the issuer of the invoice, and thus establish the tax due and the existence of a right to deduct VAT. The Court pointed out that the VAT identification number of the supplier of the goods or services is also an essential piece of information in that identification and that number is easily accessible and verifiable by the tax authorities. (Here the Court also made reference to the fact that in order to obtain a VAT identification number, undertakings must complete a registration process in which they are required to submit a VAT

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registration form, along with supporting documentation.)

Additionally, the Court took the view that such an interpretation was confirmed by the judgment of 22 October 2015, PPUH Stehcemp (C?277/14), in which the Court ruled that it was possible to deduct input VAT in a case where the national court made the finding that the building designated in the commercial register as being the supplier's registered office was in a dilapidated state. The Court held that the fact that no economic activity could be carried out at the supplier's registered office did not mean that that activity could not be conducted elsewhere in particular when those activities are carried out remotely through the use of new computer technologies.

It followed, therefore, that for the purposes of the exercise of the right to deduct VAT by the recipient of goods or services, it is not a requirement that the economic activities of the supplier be carried out at the address indicated on the invoice issued by that supplier.

Source:

European Court of Justice, 15 November 2017, joined cases:

Geissel (C374/16)

Butin (C375/16)

Keywords

incomplete invoice, input VAT deduction, invoice requirements