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ECJ: VAT invoice requirements in case of leasing

In a request for a preliminary ruling from the Supreme Court of Slovenia the European Court of Justice had the opportunity once again to comment on the invoice requirements, this time with respect to an input VAT deduction in the course of finance lease agreements in accordance with Article 203 of the VAT Directive 2006/112/EC.

Background

RED was the owner of land and - to secure the financing for a new building on that land - concluded with Raiffeisen Leasing (Raiffeisen) a sale and lease back transaction, which was carried out in two stages. **On 19 November 2007** both parties concluded a sale-and-lease back contract whereby Raiffeisen agreed to buy the property from RED and the latter agreed to pay Raiffeisen monthly lease instalments up to the value of the land and of the newly constructed building. Although that agreement indicated the VAT amounted, Raiffeisen did not provide RED with any specific invoice. Moreover, VAT was neither declared nor paid by Raiffeisen. Based on the afore mentioned agreement, **RED claimed** input VAT deduction, considering that the agreement constituted an invoice within the meaning of Article 203 of the VAT Directive, for which reason RED included that VAT in its VAT return. **In a second agreement on 22 November 2007**, RED and Raiffeisen concluded a contract for the sale of the property, which set out the sales price plus VAT. RED issued to Raiffeisen an invoice including VAT. After the conclusion of this contract, **Raiffeisen claimed an input VAT deduction**. **On 21 October 2011**, Raiffeisen and RED mutually terminated the lease agreement, since RED had not fulfilled its obligations under the agreement within the prescribed period. Raiffeisen subsequently sold the property at issue to another buyer at a price inclusive of VAT.

However, the Slovenian tax authorities held Raiffeisen liable to late payment interest on the ground that Raiffeisen had not paid the VAT due under the lease agreement for the period from 3 January 2008 to 25 July 2014. Specifically, the tax authorities considered that, since the lease agreement stated the value with an express reference to VAT, the agreement had to be regarded as an 'invoice'. Based on that document, RED had been entitled to exercise its right to deduct input VAT. In its appeal, Raiffeisen argued, inter alia, that the lease agreement could not be classified as an 'invoice' within the meaning of the VAT Directive, since it did not include all the essential elements of an invoice (the applicable VAT rate and the date of supply of the goods).

By its questions, the referring court asked the ECJ, in essence, whether a contractual sale-and-lease back agreement, upon which no invoice was issued by the parties, may be regarded as an invoice, and, if so, what details that contractual agreement must contain to be regarded as an invoice for VAT purposes.

ECJ decision

A finance lease agreement, based on which the parties involved did not issue an invoice, may be recognized as an invoice, if the lease agreement contains all the information necessary for the tax authorities of a Member State to be able to establish whether the substantive conditions for the right to deduct the VAT are satisfied in the case.

A written contract may be regarded as an invoice by observing the following criteria according to ECJ case law:

- The requirements for details to be shown in an invoice are necessary to allow the tax authorities to monitor payment of the tax due and, if appropriate, the existence of the right to deduct VAT.

- Deduction of input VAT shall be allowed if the material requirements are satisfied, even if the taxable persons have failed to comply with some formal conditions. Where the tax authorities thus have the information necessary to establish that the substantive requirements have been satisfied, they cannot impose additional prerequisites.
- It is the objective of Article 203 of Directive 2006/112 to eliminate the risk of loss of tax revenue, and that risk may be avoided where the tax authorities have the information necessary to establish whether the substantive requirements for the right to deduct VAT have been met, irrespective of whether the VAT has been indicated in a document entitled 'invoice' or in another document, such as a contractual agreement concluded by the parties.

The ECJ did not hesitate to add its usual caveat regarding the practical implementation of these guidelines, namely that **it is for the referring court to assess**, in the context of all the relevant circumstances at issue, **whether the agreement contains the information necessary** in the present case for the tax authorities to establish if the material requirements for the right to deduct input VAT are satisfied.

As regards the fact that, in the case of dispute, the contractual sale-and-lease back agreement **indicated the amount of VAT but not the VAT rate**, it is also for the referring court to ascertain whether that rate could nevertheless have been derived from that agreement.

Source:

The ECJ case reference is **C-235/21**, *Raiffeisen Leasing* judgment of 29 September 2022.

Keywords

Leasing, invoice