

Input tax refund - formally insufficient invoices do not necessarily lead to the exclusion of the input tax deduction

In the recent past, there have been a large number of European Court of Justice (ECJ) rulings which have been aimed at ensuring that formally defective (or even missing) invoices do not necessarily lead to the exclusion of the input tax deduction. The ECJ has repeatedly ruled that the right to deduct VAT is a fundamental principle of the VAT system, which may not be restricted as long as certain substantial conditions are met.

This fundamental view is also followed by the Austrian Federal Tax Court (BFG) in its ruling of 31.8.2021 concerning the input tax refund, although individual invoices do not show a VAT number of the supplier.

General facts regarding the input tax refund

Foreign companies that are established in the territory of the European Union and apply for the refund of Austrian input tax must neither have a registered office nor a permanent establishment in Austria during the refund period and

- must not generate any sales in the country or
- only carry out non-taxable sales (international transport of goods or passengers by ship or aircraft and secondary services) or
- only carry out sales for which the tax liability is transferred to the recipients of the sales (reverse-charge transactions).

Applications for refund of input tax accrued in other EU Member States are to be submitted via the electronic portal provided by the Member State in which the company is established (domicile tax office). The Member State of establishment forwards this application to the Member State of refund.

The application must be submitted within nine months of the end of the calendar year in which the right to a refund accrued.

In the case discussed in more detail below, the installation company has only carried out transactions in Austria where the tax liability is transferred to the recipient of the invoice, which is why the input tax is generally to be refunded.

The entrepreneur may deduct the tax listed separately on an invoice issued to him for his business by other

entrepreneurs for deliveries or other services performed in the country.

Statements of the facts

A Hungarian installation company has taken over construction sites in Austria as a subcontractor on a contract-for-work basis. The company's employees work in Austria for longer periods of time. The company bears the costs for the accommodation of the employees in Austria. The aim and purpose of the housing rental in Austria is to provide accommodation for the employees sent to Austria, as the employees' place of residence is often several hundred kilometers away from the individual projects. The input taxes applied for in the input tax refund procedure originate from this business-related accommodation. However, individual invoices do not show a VAT number. Copies of the contracts for work and services as subcontractors for various construction projects in Austria were submitted to the tax office.

Since individual invoices do not show a VAT number, it had to be clarified whether the input tax deduction is permitted here. The tax office, however, does not claim that these services in the invoiced form were not performed for the business operations and by entrepreneurs.

Decision of the BFG

According to the ECJ, national tax authorities may not deny the right to deduct input tax solely because the invoice held by the taxable person does not meet all the requirements, even though the authorities have all the information they need to verify whether the material conditions for the deduction of input tax are met.

Invoices are not to be rejected solely on the grounds that they do not have a consecutive invoice number but another number by which the invoice and thus the item or service in question could be identified.

The basic statement of the ECJ is that the formal requirements concerning the invoice characteristics must not go as far as making the exercise of the right to deduct VAT practically impossible or excessively difficult. The measures adopted by the Member States to ensure

the collection of the tax must not go beyond what is necessary to achieve these objectives.

According to the ECJ, it would be incompatible with the principle of proportionality to refuse the deduction of input tax only because the invoice does not contain all the information required by the applicable national law. In particular, invoices must contain the information necessary to identify the person who issued the invoices and the service provided. The VAT number is not required if the identification is ensured by a tax identification number that has been assigned ex officio to the taxable person for non-VAT purposes.

Conclusion

This means that violations of formal provisions do not have to lead to the loss of the input tax deduction if the material requirements are met at the same time. Therefore, an input tax deduction can be granted even if the invoice is not formally correct – provided that the material requirements are met.

In the present case, therefore, the input tax deduction was not to be denied because the issuer of the invoice did not indicate a VAT number on the invoice. This is especially true if the authority has not (yet) issued or would not have issued a VAT number to the supplying entrepreneur.

The application for input tax refund of the Hungarian installation company was granted. In the future, however, care should be taken to receive proper invoices including the VAT number in order to avoid unnecessary delays or the non-granting of the input tax deduction.

ANDERSEN

If you need further information, please contact:

Magda Zarsky
Tax Partner at G&W International
Collaborating firm of Andersen Global in Austria
magda.zarsky@steuerservice.at