

BFH rules on correction of invoices with retroactive effect

Input VAT recovery from corrected invoice is available from time original invoice is issued

In a landmark decision (V R 26/15) issued on October 20, 2016, Germany's Federal Fiscal Court (BFH) followed the reasoning of the Court of Justice of the European Union (CJEU) in its 15 September 2016 decision in the *Senatex* case (C-518/14), and held that the correction of an invoice issued by an entrepreneur for a service rendered has retroactive effect from the point in time when the invoice originally was issued. Additionally, the BFH addressed in detail the minimum requirements that an invoice must meet to be able to be corrected, and the time limit for such corrections.

The taxpayer in the case had deducted input VAT on the basis of invoices that the local tax authorities found to be improper because, in their view, the specifications regarding the relevant services were not in the proper format. Thus, the local tax authorities denied the input VAT deduction. After unsuccessfully appealing the denial in an internal appeals procedure with the tax authorities, the taxpayer presented corrected invoices to the lower fiscal court in the course of subsequent court proceedings. The lower fiscal court disallowed the corrected invoices because the invoices did not have retroactive effect from the date the invoices originally were issued.

On appeal to the BFH, the BFH held that an entrepreneur generally cannot be denied an input VAT deduction, even if an invoice is formally incorrect. Thus — in accordance with the current case law of the CJEU — the existence of a correct invoice is a formal requirement but not a substantive condition for the right to deduct input VAT. The BFH determined that if the relevant invoice is corrected by the end of the trial before the lower fiscal court, the correction will have retroactive effect from the date the invoice originally was issued, and must be taken into account for purposes of the right to deduct input VAT. However, not all invoices can be corrected, according to the BFH. Invoices that are required to be taken into account for VAT purposes must include information relating to the invoicing party, the invoice recipient, specifications of the services rendered and the payment, and the amount of VAT must be separately stated. To be able to be corrected, an invoice must show sufficient information on these items to be considered not so indeterminate, incomplete or obviously false that the invoice is deemed to be missing information.

Comments

The court's dicta regarding the minimum requirements for an invoice to be able to be corrected and the time limit for correcting an invoice is as important as its determination of the retroactive effect of the invoice correction, which may lead to the remission of interest assessed for the period between the issuance of the original invoice and the date it was corrected.

Companies that have paid interest in similar cases in the past should examine whether they have a claim for reimbursement or whether the assessment of interest still may be challenged. Companies that were denied an input VAT deduction due to purchase invoices that were formally incorrect, that were assessed related interest and that filed a formal appeal against the assessment now may refer to the case law of both the BFH and the CJEU to support their position. It is likely that the German tax authorities may place less emphasis on the existence of formally correct invoices when conducting audits in future, since the correction of invoices may have retroactive effect and interest no longer may be levied on subsequent payments merely because an invoice is formally incorrect.

Even though the BFH's decision is favorable for taxpayers and ultimately will support their position in many cases, companies should not fail to examine whether the relevant purchase invoices need to be corrected — the legal requirements with respect to an invoice have not been reduced. Therefore, an input VAT deduction on the basis of an incorrect invoice still may be denied, regardless of the possibility that it may be corrected with retroactive effect.

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