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*German Tax and Legal News*

## **CJEU AG opines invoice corrections may have retroactive effect for input VAT deduction**

AG questions German provisions deferring deduction of input VAT in case of invoice corrections.

On 17 February 2016, Advocate General (AG) Bot of the Court of Justice of the European Union (CJEU) issued his opinion in the case of Senatex GmbH (C 518/14), regarding the German provisions on the input VAT deduction in relation to corrected invoices. The AG opined that deferring the input VAT deduction until an invoice is corrected may be incompatible with EU law.

According to the relevant German provisions, a correct invoice must be issued for a VAT payer to be entitled to an input VAT refund. If an invoice does not meet the German invoicing requirements, the relevant input VAT is not deductible immediately; instead, the deduction is deferred to the period in which a corrected invoice is made available to the recipient.

The case before the CJEU involved a taxpayer that applied for an input VAT refund based on several invoices (including self-billing invoices) that did not indicate the required tax numbers or VAT identification numbers of the suppliers. During a tax audit, the German tax authorities challenged the respective input VAT refund. The tax authorities' position was that, even if the taxpayer could provide corrected invoices during the audit and appeal proceeding, they would reject the input VAT refund for the period concerned (i.e. the period in which the initial invoices were issued). The taxpayer appealed this decision before the lower tax court.

The question referred to the CJEU by the German lower tax court was whether the EU VAT directive and previous CJEU decisions provide for retroactive effect of corrected invoices and, if so, under what conditions.

The AG opined that the German provision that defers the deduction for input VAT on a corrected invoice until the period in which the correction is made is not in line with the principle of VAT neutrality because the immediate nature of the input VAT deduction that generally is available aims to ensure the neutrality of the common system of VAT and to avoid subjecting taxable persons to the financial risk of bearing the burden of the VAT, in whole or in part.

The AG explained that a provision that grants the right to deduct input VAT only for the period in which a corrected invoice is available not only would contradict the principle that this right is immediate, but also would give rise to a significant financial risk for the taxable person due to the interest gap that could arise (even though no fiscal loss would be incurred by the relevant EU member state, since the final VAT revenue would remain the same). Additionally, the CJEU has indicated in several cases that the principle of VAT neutrality requires the deduction of input VAT to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements.

Accordingly, the AG concluded that national legislation under which the correction of an invoice in relation to certain required details (namely, the VAT identification number) does not have retroactive effect (i.e. where the right to deduct VAT may be exercised only for the year in which the initial invoice was corrected, and not for the year that invoice was issued) is not in line with EU law.

The AG also clarified that EU member states may adopt measures to penalize a failure to provide the required invoice details, to prevent VAT evasion and to ensure the effectiveness of the obligation to provide the details required by the VAT directive, as long as they comply with the principle of proportionality. Member states also may adopt measures placing a temporal restriction on the possibility of correcting an incorrect or incomplete invoice, provided they apply in the same way to similar rights in tax matters based on domestic law

and to such rights based on EU law (principle of equivalence) and they do not render the exercise of the right of deduction impossible or excessively difficult in practice (principle of effectiveness).

### Comments

The CJEU now must consider the case. If the CJEU follows the AG's opinion, the decision would have a significant impact on the German input VAT deduction scheme for registered and nonregistered taxpayers.

Since it remains unclear how the CJEU will rule, companies should monitor the news on the upcoming decision.

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