


URL: <http://www.deloitte-tax-news.de/german-tax-legal-news/cjeu-rules-on-timing-of-input-vat-deduction-on-corrected-invoice.html>

 18.10.2016

*German Tax and Legal News*

## **CJEU rules on timing of input VAT deduction on corrected invoice**

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

The Court of Justice of the European Union (CJEU) issued a decision on September 15, 2016 in a German case (Senatex GmbH (C-518/14)) involving the effect of corrections made to VAT invoices.

Senatex reclaimed VAT on commission statements from its sales representatives and on invoices from a designer, but the documents relied on to evidence the claims were not valid VAT invoices, because they lacked the supplier's tax/VAT number. Although the relevant numbers subsequently were added to the documents, the German tax authorities took the position that the absence of the number on the original documentation at the time the claims were made meant that they were invalid and that the input tax claims could be made only from the time the invoices were corrected. As a result, the taxpayer was required to bear interest for the period between the receipt of the initial invoice and the date the invoice was corrected.

The CJEU disagreed with the tax authorities, concluding that the German legislation relied on to disallow the original input tax claims is precluded by EU law, so that, in effect, the later correction of the invoices had retroactive effect and validated the original claims.

The principle of neutrality of the VAT system requires that a VAT deduction be allowed if the substantive requirements for the deduction are met, even if certain formal requirements (e.g. including the VAT ID number on the invoice) are not met. The EU VAT directive allows member states to impose penalties for failure to comply with formalities, but the penalty may not be the disallowance of a VAT deduction and the imposition of interest that bears no relationship to the severity of the transgression. According to the CJEU, the German rules that postpone the right to a VAT deduction until the year the invoice is corrected and impose interest during that period go further than is necessary to achieve the compliance objective.

Germany's Federal Tax Court now will have to reconsider its position that a VAT invoice generally is a substantive requirement rather than a mere formality for the right to deduct input VAT.

The issue of whether EU member states are permitted to set a time limit to correct an invoice remains unsettled and will be subject to further judicial determination. It remains further to be clarified which type of invoice content might be corrected without jeopardizing input VAT recovery as from the beginning- potentially the lack of essential information might not be corrected with retroactive effect.

Taxpayers that have been denied input VAT deductions as a result of incorrect or incomplete VAT invoices and that have paid interest relating to such claims should assess whether there is a possibility to challenge the disallowance and the interest charge.

---

Diese Mandanteninformation enthält ausschließlich allgemeine Informationen, die nicht geeignet sind, den besonderen Umständen eines Einzelfalles gerecht zu werden. Sie hat nicht den Sinn, Grundlage für wirtschaftliche oder sonstige Entscheidungen jedweder Art zu sein. Sie stellt keine Beratung, Auskunft oder ein rechtsverbindliches Angebot dar und ist auch nicht geeignet, eine persönliche Beratung zu ersetzen. Sollte jemand Entscheidungen jedweder Art auf Inhalte dieser Mandanteninformation oder Teile davon stützen, handelt dieser ausschließlich auf eigenes Risiko. Deloitte GmbH übernimmt keinerlei Garantie oder Gewährleistung noch haftet sie in irgendeiner anderen Weise für den Inhalt dieser Mandanteninformation. Aus diesem Grunde empfehlen wir stets, eine persönliche Beratung einzuholen.

This client information exclusively contains general information not suitable for addressing the particular circumstances of any individual case. Its purpose is not to be used as a basis for commercial decisions or decisions of any other kind. This client information does neither constitute any advice nor any legally binding information or offer and shall not be deemed suitable for substituting personal advice under any circumstances. Should you base decisions of any kind on the contents of this client information or extracts therefrom, you act solely at your own risk. Deloitte GmbH will not assume any guarantee nor warranty and will not be liable in any other form for the content of this client information. Therefore, we always recommend to obtain personal advice.