



VAT file

Mandatory information on an invoice



by PHILIPPE NOIRHOMME

The tax authorities refuse you the right to deduct VAT due to non-regulatory invoices and you would like to know whether or not this position can be challenged by you?

Our firm puts all its expertise at your service and assists you in the best response that should be brought to it.



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Is the VAT borne on a non-compliant invoice recoverable?

The economy of VAT is based on the fundamental principle that the tax included in the price of a taxed transaction is deductible from the tax applicable to that transaction. The right to deduct is a **fundamental principle** of the common VAT system which cannot, in principle, be limited and which is exercised immediately for all the taxes which have encumbered the operations carried out upstream. The system of deductions thus established aims to relieve the entrepreneur entirely of the burden of the VAT due or paid in the course of all his economic activities. The VAT system thus seeks neutrality with regard to the tax burden of all economic activities, whatever their aims or results, provided that these activities are, in principle, themselves subject to VAT.

The deduction is however subject, from a formal point of view, to the possession by taxable persons of a document clearly mentioning the VAT. In most cases, this document, which justifies the exercise of the right to deduct, consists of the **invoice** submitted by the supplier of the goods or services. The invoice is a detailed note of the services or goods sold. It is a document of a commercial and accounting nature, established by a legal structure (company, association, individual entrepreneur, etc.) to record the conditions of purchases and sales of products, goods or services rendered (nature, quantity, weight, quality, price, terms and timing of payment, etc.).

With regard to the procedures for exercising the right to deduct, the company must have an invoice validly drawn up by its supplier or service provider.

The invoice is considered to be **irregular or incomplete** when it does not meet the **formal conditions** prescribed by VAT regulations. Some zealous VAT controllers strictly apply this regulation and simply reject the right to deduct when certain compulsory information does not appear on purchase invoices. They also apply a 10% flat fine in passing for incorrect application of the right to deduct.

Question of law

Can the violation of formal requirements suffice to deny the right to deduct? In other words, can a purchase invoice that does not include certain compulsory information, however prescribed by VAT regulations, be automatically rejected by the tax authorities in the event of VAT control?

The disputes are numerous and the Belgian jurisprudence divided.

Nevertheless, a new European case-law framework is slowly emerging on the subject. **For the Court of Justice, failure to comply with certain formal requirements cannot result in the loss of the right to deduct except in the event of fraud .**

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We have selected from our database the most essential documents relating to the theme "Mandatory information on invoices".



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Information published in our VAT News in recent years on this topic

Mandatory information to appear on invoices - What is an "address"?

CJEU 15/11/2017 - C-374/16 and C-375/16.

The VAT Directive lists the information which must appear on invoices and in particular the full name and address of the supplier. For the Court of Justice of the EU, the term "address" has a **broad scope** and covers any type of address, including a simple mailbox, as long as the person can be contacted there. The purpose of mentioning the address of the issuer of the invoice, in combination with its name and VAT identification number, is to identify the latter and thus allow the tax authorities to check whether the amount of VAT has been declared and paid. In this regard, the VAT identification number of the supplier of the goods or services constitutes **essential information** in the context of said identification. **This number is easily accessible and verifiable by the administration**. The tax authorities cannot therefore make the exercise of the right to deduct VAT subject to the indication on the invoice of the address of the place where the issuer of the latter pursues its economic activity.

Mandatory information on invoices - Reversal of the administrative approach

The invoice is considered to be **irregular or incomplete** when it does not meet the **formal conditions** prescribed by VAT regulations. Some zealous VAT controllers strictly apply this regulation and simply reject the right to deduct when certain compulsory information does not appear on purchase invoices. They also apply a flat-rate fine of 10% in passing for incorrect application of the right to deduct. Faced with European case law which has greatly qualified the negative influence of an irregular invoice in its form, the administration has decided to review its position and now accepts the principle of "**pre-eminence of substance over form**" »When exercising the right to deduct (circular 2017 / C / 64 relating to the invoice, condition for exercising the right to deduct in VAT matters) outside of fraudulent situations.

Intra-community acquisitions - Failure to comply with formal requirements cannot result in the loss of the right to deduct.

CJEU - Idexx, C-590/13 - December 11, 2014

An Italian company buys goods from French and Dutch suppliers. However, it omits to include these intra-Community operations in the ad hoc registers provided for this purpose by Italian regulations. The Italian tax administration draws up a report against the company for not having respected the Italian regulations relating to the recording of transactions and claims from it, in addition to the payment of VAT, also an amount equivalent to 100% of the tax, as an administrative penalty.

The dispute ends up before the Court of Justice which says for right the following: as soon as the tax administration has the necessary data to establish that the substantive requirements are satisfied, it cannot impose, as regards the right of the 'company to deduct this tax, additional conditions may have the effect of nullifying the exercise of this right. In other words, failure to comply with formal requirements [such as accounting, invoicing and reporting obligations] of the right to deduct cannot result in the loss of this right once the substantive conditions are met. encountered.

Irregularities on invoices - Right to deduct

CJEU C-80/11 & C-142/11

The VAT Directive is opposed to an administrative practice which consists in refusing to a taxable person the deduction of the VAT paid for irregularities committed by the issuer of the invoice unless the taxable person had or should have known of a fraud committed upstream in the service chain.

Formal condition for the deduction of VAT - Information to appear on purchase invoices regarding the identification of the beneficiary of the service

French Council of State, 10th and 9th ss-sect, March 26, 2012, n ° 326333, Sté CERP Lorraine

The certain identification of the beneficiary of an operation is essential to his right to deduct. If the mention of the full name and address of the customer subject to VAT on the invoice drawn up by the supplier or the provider makes it possible to presume that the goods or services have been delivered or rendered to him and to verify that they were for the needs of its taxed operations, the absence of mention of this information

or their erroneous nature on the invoice which is given to it may not prevent the tax from being deductible insofar as the customer provides proof by any means of actual payment by itself of this invoice.

Right to deduct - Possession of irregular or imprecise invoices

CJEU, May 8, 2013

The VAT Directive does not prohibit the rectification of erroneous invoices. Thus, when all the material conditions necessary to be able to benefit from the right to deduct VAT are met and that, before the adoption of the decision by the authority concerned, the taxable person has provided the latter with a corrected invoice, in principle, the benefit of this right cannot be refused on the ground that the initial invoice contained an error.

The VAT Directive does not however oppose Belgian regulations under which the right to deduct VAT can be refused to taxable persons, service takers, who hold incomplete invoices, even if these are supplemented by production information aiming to prove the reality, the nature and the amount of the operations invoiced after the adoption of a refusal decision.

Mandatory information on invoices - Rejection of the right to deduct

Liege - 1st Instance October 3, 2011

In the case brought before the court, the administration had rejected the deduction of VAT on invoices for the purchase of computer equipment which did not include either the date of actual delivery of the goods or the unit price of the goods delivered. However, the court did not follow the reasoning of the administration. Missing entries are not essential. Those included on the disputed invoices are sufficient to ensure effective control by the tax administration and allow correct collection of tax.

The administration also tried to reject the deduction of VAT on the grounds that the supplier had never actually been identified with VAT, that the VAT number indicated on his invoices did not belong to him and that the registration number with the commercial register was fanciful. Here again, the court rejects the administrative argument. If the buyer must verify the presence of the information necessary for the control and the collection of VAT, it is not his responsibility to become a detective and to require, in addition, his contracting partner to prove the veracity of

these information . The shortcomings noted concern the supplier and could not be known to the buyer by simply reading the invoices which, on these points, are regular from a formal point of view.

Mandatory information missing on an invoice - Rejection of the right to deduct

Cassation - January 16, 2014

The VAT Directive authorizes member states to make the exercise of the right to deduct dependent on the possession of an invoice dependent on a series of compulsory notices making it possible to ensure the collection of the tax and its control by the administration. However, these details cannot be so numerous or technical as to make the exercise of the right to deduct almost impossible or excessively difficult. It is up to the national judge to decide whether the particulars imposed by the member states meet the criteria mentioned.

In casu, the VAT administration had refused the deduction of VAT on invoices that did not include the delivery date. This position had been followed by the Court of Appeal. The Court of Cassation confirms the judgment under appeal.

VAT invoiced by a taxable person not identified for VAT.

CJEU, C-438/09, December 22, 2010

A taxable person uses the services of a Polish service provider who does not have a VAT identification number. The latter therefore issues an invoice to the attention of his client by simply indicating his tax identification number, this number being automatically assigned to operators by the tax authorities, regardless of the submission of a request for VAT registration.

In the absence of a VAT number identifying the provider, the Polish authorities refuse to accept the service provider to deduct VAT. The Court of Justice affirms on the contrary that a taxable person benefits from the right to deduct the VAT paid on the services provided by a service provider as soon as the related invoices include all the information required by European legislation. This is the case when the tax identification number of the service provider is mentioned, even if his VAT identification number is missing.

Non-compliant invoices - Rejection of the right to deduct

Court of First Instance - Brussels - September 26, 2007

The Administration is right to reject the right to deduct on invoices for the purchase of used cars which do not include essential details (vehicle delivery date, engine size, engine power and body model) for check the correct application of VAT.



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