

VAT Newsflash

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German Federal Ministry of Finance issues decree on retroactive invoice correction

The German Federal Ministry of Finance (Bundesministerium der Finanzen, or BMF) has published a decree on retroactive correction of VAT invoices. The tax authorities' VAT application guidelines have been updated accordingly. The decree follows the principles of European Court of Justice (ECJ) case law and certain principles of national case law as developed by the Federal Fiscal Court (Bundesfinanzhof, or BFH).

General information

In order to exercise the right to deduct input VAT, an invoice must be held. As the BMF states, such an invoice is not a mere formal requirement; rather, holding an invoice is a mandatory requirement that cannot be met by providing alternative evidence.

Where the available invoice is invalid, the BMF permits two methods of remedying the situation for the purposes of input VAT deduction: provision of objective evidence concerning individual substantive requirements for input VAT deduction (referred to below as 'invoice supplementation'), or correction of the invoice. It should be noted that invoice supplementation must not be confused with retroactive correction of an invoice by supplementing missing invoice content.

Supplementation of an invoice with additional information

Where a taxable person holds an invoice that does not meet all the invoicing requirements and has not been corrected, the input VAT deduction may nevertheless be granted if the taxable person provides objective evidence about the fact that, on the input side, other taxable persons have actually supplied the goods or services. It should be noted that such evidence is subject to strict criteria; the BMF states that such evidence may only be submitted "as a matter of exception", and a high standard must be applied. The tax authorities are not obliged to investigate missing information, and the recipient of the supply will be responsible for any residual doubt or lack of clarity. However, the formal requirements do not appear to be particularly strict. It seems that the additional information does not need to explicitly refer to the respective invoice. Moreover, for instance, the decree seems to suggest that invoice supplementation merely requires an invoice showing a VAT amount, rather than all of the five main invoice components required for retroactive invoice correction (see below). Supplementing an invoice in this way has a retroactive effect: the input VAT is deductible in the VAT return period in which the relevant supply was performed and the invoice showing VAT was originally issued.

Invoice correction

The BMF differentiates between retroactively correctable invoices and invoices not eligible for retroactive correction.

A document is considered to be an invoice suitable for retroactive correction if it contains at least the following information: the invoice issuer (supplier), the recipient of the supply, a description of the supply, the consideration and the VAT charged (requirements may differ for invoices for small amounts). The decree provides comprehensive information on all five of these main requirements. A mandatory requirement may be considered not to have been met if the details provided are incomprehensible, incomplete or manifestly incorrect to such a degree that they amount to missing information. Notably, in a situation where the parties to the supply erroneously assumed the reverse charge procedure to be applicable, the BMF considers invoices issued without VAT to be eligible for retroactive correction if the invoice contains the prescribed reference to the reverse charge procedure. It should be noted that the latter provision does not cover all cases in which the reverse charge procedure is applicable.

If an original invoice is corrected by a supplementary document that refers specifically and unambiguously to that invoice, it is advisable to explicitly clarify that the supplementary document is intended to correct, amend or supplement the invoice. An invoice may also be corrected by cancelling the incorrect invoice and issuing a new one.

It should be noted that the effects of an invoice correction are not optional: if the conditions are met, the correction will have a retroactive effect, regardless of whether such an effect is to the invoice recipient's advantage or disadvantage. If an invoice has been retroactively corrected, the input VAT deduction must be made for the tax period in which the supply was performed and the incorrect invoice was originally issued.

The retroactive correction of an invoice does not necessarily mean that the corresponding tax period is open to amendment. This means that, even where a valid invoice correction has been made, it is not always certain that the input VAT will actually be deductible for the period concerned. If the assessment period in question is open to amendment, an invoice may be corrected and submitted until the last hearing at the tax court of first instance.

If an invoice is not considered to be eligible for retroactive correction on the grounds that it lacks at least one of the five main invoicing requirements listed above, the input VAT deduction cannot be made retroactively. Instead, the input VAT deduction can only be made for the point in time at which the invoice issuer corrected the invoice and sent the amended invoice details to the recipient.

In a situation where the VAT amount shown on the invoice is wrong, no retroactive correction is possible. If the VAT amount has been understated, the difference between the amount originally shown and the correct VAT amount is only deductible at the time when the invoice is corrected. Similarly, overstated VAT amounts also cannot be retroactively corrected.

Transitional provision

The BMF provides for a non-objection rule: for invoice corrections by way of a correction document sent to the recipient by 31 December 2020, it is also possible to reclaim the VAT for the tax period in which the invoice was corrected. This rule is not applicable if the input VAT deduction from the original invoice has already been granted. It should be noted that this non-objection rule does not mention invoice supplementation or correction by cancelling and reissuing an invoice.

Follow-up information for VAT refund applications

The Federal Central Tax Office (Bundeszentralamt für Steuern, or BZSt), which is responsible for both EU and non-EU VAT refund applications for the refund of German VAT, has referred to the invoice correction principles above and the non-objection rule on its website. In particular, the BZSt explicitly points out that the relevant VAT refund assessment must still be open to amendment in cases of retroactive invoice correction, and it recommends formally raising objections to VAT refund notices where an input VAT refund has been refused on the grounds of the invoice being incorrect. In addition to correcting invoices by submitting a correction document or cancelling and reissuing the invoice, the BZSt also permits corrections to be made on the original invoice itself, under certain conditions.

Sources

BMF decree of 18 September 2020 (in German only)

BZSt information dated 28 October 2020 on the VAT refund procedure for EU applicants and non-EU applicants

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