KPMG
cutting through complexity

MwSt.VAT Newsletter

January/February 2015

NEWS FROM THE BFH

Input tax deduction in the event of total loss of invoices

BFH, ruling of 23 October 2014, V R 23/13

The ruling of the German Federal Tax Court (BFH) addresses the question as to the conditions, under which the input tax deduction may be granted despite a total loss of the accounting documents.

The case

A sole entrepreneur was the sole shareholder and managing director of a German limited partnership (GmbH), which produced and sold windows and doors. For these purposes, he rented out to the GmbH the major operating fundamentals, as a result of which a VAT group was established between himself as the controlling company and the GmbH as the group company. In 2004, the transporter with all accounting documents and the whole computer system containing the bookkeeping was stolen from the business premises. It is in dispute whether the tax authorities were entitled to reduce the input tax amount deducted without supplying invoice copies by 40 % in accordance with their estimation.

Ruling

According to the BFH, the company deducting the input tax bears the burden of providing proof and evidence for all facts that give rise to the right to deduct input tax pursuant to § 15 (1) sent. 1 no. 1 of the German VAT Law (UStG). Therefore, it must provide evidence and prove on the one hand that it has received goods or services for its business from a company, and on the other hand that it possessed a proper invoice. For these purposes, all procedurally admissible means of evidence are at the company's disposal.

In the present case, the BFH reaches the conclusion that the individual entrepreneur has no right to claim further input tax deductions. He has neither provided evidence nor proved which specific services he in fact received for his business from other companies. The Financial Court is only obliged to approve the application to take evidence by examining witnesses if this is sufficiently substantiated. Hence, the application to take evidence must refer to the existence of original invoices for the specifically indicated input supplies. Consequently, the accountant, the tax advisor and the clerk named by the entrepreneur were unqualified to testify as witnesses. They were merely stated to support the claim that only such input tax amounts were deducted in the VAT returns, for which appropriate original invoices indeed existed. However, this does not specify whether the invoiced supplies were also indeed received. For want of specifically stated input supplies, the application for evidence by a witness that appropriate original invoices for all supplies of goods and services of the fixed and current assets existed is too vague.

Please note:
Any company may be affected by a total loss of the invoices due to fire, theft or flood. In the event of loss, the company may provide evidence with all procedurally admissible means of evidence to demonstrate that an original invoice was in the possession of the company at the time the input tax was deducted.

Content

Copies or duplicates of the original invoices may primarily be taken into account as means of evidence. In addition, the company has to prove – according to the BFH – which specific goods and services that it received invoices for were supplied to it. If in total only an evidence provided by a witness is offered, the proof is very difficult due to lack of further documents. To reduce the risk, a backup of the hardcopy invoices or electronically stored invoices may be created, but this would take the advantages of the electronic storage ad absurdum.

Information included on invoices for zero-rated intra-Community supplies of goods

BFH, ruling of 26 November 2014, XI R 37/12

In this ruling, the BFH stated its position regarding references to the zero-rated status of intra-Community supplies of goods (VAT exemption with entitlement of input VAT deduction) on an invoice consisting of several individual documents.

The case
A car dealer issued invoices to a company in Austria, which was managed by X, for the supply of Ferraris. The purchase price was shown on the invoices as the "net export price: EUR 159,000.00". The invoices did not include any other reference to the zero-rated status of the supplies or to any other documents (see § 31 (1.2) of the German VAT Operating Regulation (UStDV)). A separate "enclosure" was included with each invoice setting out the relevant invoice numbers and dates. This specified the vehicle supplied, including the brand, model and vehicle identification number, and also provided a "confirmation of intra-Community supply of goods", which confirmed to X that the vehicles had been supplied "to another EU Member State (Austria)". One of the points of contention was whether the reference to the intra-Community supply of goods, and thus its zero-rated status, as prescribed in § 14 (4) sent. 1 no. 8 UStG, constituted documentary evidence under § 17a (2) no. 1 UStDV.

The ruling
§ 14 (4) sent. 1 UStG sets out the specific information that must be included in invoices. According to § 14 (4) sent. 1 UStG, an invoice is deemed to be any document constituting an invoice for the supply of goods or service, irrespective of how the document is referred to in business transactions. The BFH held that there was a close link between the information contained in the separate "enclosure" and the part of the statement headed "invoice" which indicated a "net export price of EUR 159,000.00". Taken as a whole, the aforementioned statements thus constituted an invoice for the supply of the vehicles concerned. Given that the document headed "invoice" did not include VAT and the document entitled "enclosure" indicated that the supply constituted an intra-Community supply of goods, the documents comprising the invoice referred to the fact that the supply was an intra-Community supply of goods, and therefore zero-rated, as prescribed in 14 (4) sent. 1 no. 8 UStG. On this basis, there was no likelihood that the supply concerned could be mistaken for a supply of goods from or to a third country (see BFH ruling of 14 November 2012, XI R 8/11, VAT Newsletter March 2013).

Please note:
In accordance with § 31 (1) sent. 1 UStDV, an invoice may comprise more than one document, which, taken together, satisfy all the requirements with regard to information, as set out in § 14 (4) UStG. As stipulated in § 31 (1) sent. 2 UStDV, the "master document" summarizing the amount charged and the amount of VAT due must also refer to any other documents which contain further information required under § 14 (4) UStG. While § 31 (1) sent. 2 UStDV requires the "master document" to refer specifically to any other documents, the BFH concluded in its ruling of 26 November 2014, XI R 37/12 that any separate enclosure forming an integral part of the document must include a reference in the opposite direction from the enclosure.

NEWS FROM THE BMF

New regulations for telecommunication services, radio and television services and electronically supplied services as of 1 January 2015

BMF, guidance of 11 December 2014 – IV D 3 – S 7340/14/10002

In its present guidance, the German Ministry of Finance (BMF) has commented on the place of supply of telecommunication services, radio and television broadcasting services and electronically supplied services for non-entrepreneurs (§ 3 a (5) UStG) as well as on the special taxation procedure pursuant to § 18 (4c, 4e) and § 18 h UStG as of 1 January 2015 (see VAT Newsletter July 2014).

With the BMF guidance, the German VAT Application Decree (UStAE) is adjusted to the new regulations by taking into account the Implementing Regulation (EU) no. 282/2011 changed by the Implementing Regulation (EU) no. 1042/2013 of 7 October 2013. A special section is dedicated to the obligations to keep record.

The BMF does not comment on the implementation of Art. 9a of the Implementing Regulation on the identification of receipt of supplies of electronically supplied services through § 3 (11a) UStG and revocation of § 45 Telecommunications Act (TKG) (see VAT Newsletter May 2014).

For lack of a legal binding effect, the BMF principally does not comment on the explanatory guide of the Commission on the new regulations (see BMF guidance of 17 Decem-

ber 2014, article in this newsletter). There is a deviation in the BMF's statements on the participation of a tax group in a mini-one-stop-shop.

According to the European Commission, the connections to a fixed establishment ceases to exist for the purpose of registering for the mini-one-stop-shop if a member of the VAT group has or will have this fixed establishment in another Member State. The services provided by this fixed establishment cannot be included in the statement to be submitted by the VAT group through the mini-one-stop-shop. Services supplied by the VAT group in the Member State of the fixed establishment are to be included in the VAT return for this fixed establishment submitted through the one-stop-shop instead of in the national VAT return. As a result, a VAT group cannot include any fixed establishments in other Member States into its registration for the mini-one-stop-shop.

Contrary to this, pursuant to sec. 18h.1 (1) sent. 4 UStAE (taxation procedure for companies resident outside Germany providing services pursuant to § 3a (5) UStG in the remaining Community area) the tax group's participation in a mini-one-stop-shop is only uniformly possible with regard to all EU Member States, in which the tax group does not have any permanent establishment (sec. 3a.1 (3) UStAE). In the BMF's view, the reporting of sales in the mini-one-stop-shop is ceased for all sales in this member State with regard to the permanent establishment and not only – as in the view of the European Commission – the transactions carried out by the permanent establishment.

Please note:
To avoid difficulties in drawing a distinction during the transition to the new regulations, a union-wide coordinated non-objection regulation for telecommunication services, radio and television services and electronically supplied services provided to non-entrepreneurs after 31 December 2014 was introduced if advance payments were made for these transactions by the recipient of the supplies before 1 January 2015. If taxes on the advance payments were paid by the supplier according to the regulations applicable until 31 December 2014 at the place where his registered offices was located (or a permanent establishment, which actually received the payments or partial payments), no objections will be raised for simplification reasons if the entrepreneur does not adjust this payment in the final invoicing of the supplies. In this case, the advance payments already made are to be considered as a net amount (excluding VAT) to the basis for assessment in the final invoicing if the VAT was not refunded to the recipient of the supplies by the date of the final invoicing. The non-objection requires the supplier to pay taxes for the advance payments in the appropriate amount. This may have been stated in a preliminary VAT return or an annual VAT return. In such events, the advance payment invoices have not to be corrected, according to the BMF.

Legal status of publications of the European Commission

BMF, guidance of 17 December 2014 – IV D 1 – S 7058/14/10004

The BMF makes explicit reference to the fact that publications of the European Commission on the practical application of the EU Law in the VAT area do not have any legal binding effects. This applies both to already existing and future publications by the European Commission. For the application of the law, the VAT law, the VAT Operating Regulation and the regulations in the VAT Application Decree as well as other administrative guidance are decisive. Further, the BMF has commented in its guidance of 3 January 2014 (IV D 1 – S 7072/13/1005) on the treatment of Guidelines of the VAT Committee.

As a result, the following Commission's publications have no legally binding effect:

- Explanations on the VAT rules for the invoicing (Council Directive 2010/45/EU);
- Guideline on mini-one-stop-shops for the VAT dated 23 October 2013;
- Explanations on the change of the EU VAT rules with regard to the location of telecommunication services, radio and television broadcasting services and electronically supplied services that become effective in 2015, dated 3 April 2014 (Implementing Rules of the Council (EU) no. 1042/2013) and
- Information for companies, which register for the mini-one-stop-shop-scheme (MOSS) (additional Guidelines – review of MOSS data).

Please note:
Due to the lack of a binding effect, the BMF does not explicitly refer to the publications of the Commission in its guidance of 11 December 2014 on the new regulations for telecommunication services, radio and television services and electronically supplied services as of 1 January 2015 (see article in this newsletter). With regard to the interpretation of the new regulations, the BMF takes into consideration the directly applicable Implementation Regulation instead (EU) no. 282/2011, which was changed by the Implementation Regulation (EU) no. 1042/2013 of 7 October 2013.

Expansion of the non-objection regulation on the reverse charge mechanism in supplies of precious metal and base metal, selenium and Cermets supplies

BMF, guidance of 22 January 2015 – IV D 3 – S 7279/14/10002-02

The tax liability of the recipient of specific metal supplies effective as of 1 October 2014 was limited by the new changes to § 13b (2) no. 11 UStG and Annex. 4 of the UStG as of 1 January 2015 (see article in this newsletter about the law on the adaption of the German Tax Code (AO) to the Customs Code of the Union and on the change of further tax provisions - "Zollkodex-Anpassungsgesetz" ("Customs Code Alignment Law")).

Previous non-objection regulation
According to the BMF guidance of 5 December 2014 (see VAT Newsletter December 2014), with regard to supplies executed after 30 September 2014, but before 1 July 2015, the supplier and the recipient of the supplies may mutually assume that the supplier is liable to VAT if he pays taxes on the correct amount. This regulation also applies to advance and prepayments made before 1 July 2015. The application rules for the final invoices, installment payments etc. stated in the BMF guidance of 26 September 2014 are accordingly applicable. As a result, the dates stated therein should be postponed by nine months (instead of three as up to date) if the contracting parties make use of the transitional arrangement.

Expansion of the non-objection regulation
With regard to companies that have already applied the reverse charge mechanism in accordance with the regulations applicable as of 1 October 2014, problems in the adaption to the limited scope of application of the reverse charge mechanism as of 1 January 2015 may arise. In order to avoid such adaption issues (at a very short notice), the BMF grants an expansion of the non-objection regulation according to its guidance of 22 January 2015. For supplies provided after 31 December 2014 – but before 1 July 2015 – the application of the reverse charge mechanism by the supplier and the recipient of the supplies will not be objected even if the supplier were liable to tax according to the changes of 1 January 2015. Accordingly, this also applies to advance and prepayments made after 31 December 2014, but before 1 July 2015.

Please note:
With the expansion of the non-objection regulation, the BMF complies with the needs of the companies, which adjusted their processes to the reverse charge mechanism already as of 1 October 2014 and which are forced to readjust their processes due to the changes of the scope of application of the reverse charge mechanism as of 1 January 2015. Therefore, such companies are also allowed to implement the necessary measures by 1 July 2015.

Compensation from a third party for payment of a device premium by a mobile phone company to the agent of a mobile phone contract

BMF, guidance of 4 December 2014 – IV D 2 – S 7100/10/10005

In its guidance of 4 December 2014, the BMF commented on the consequences of the BFH ruling of 16 October 2013, XI R 39/12 (see VAT Newsletter January/February 2014).

The BMF liaises with the stance of the BFH. If an agent of mobile telephone contracts supplies to customers a "free" mobile telephone or other electronic devices when entering into a mobile telephone contract, the surcharge paid by the mobile operator to the agent in addition to the commission (so-called device premium) is considered – according to the BFH – to be a payment by a third party within the meaning of § 10 (1) sent. 3 UStG for the supply to the customer by the agent.

In such case no VAT-taxable transaction as a benefit in kind exists within the meaning of § 3 (1b) sent. 1 no. 3 UStG carried out for the customer by the agent of mobile telephone contracts. If the agent states in the invoice a VAT amount separately with regard to the payment from third parties, the agent is obliged to pay the stated VAT amount due to incorrect VAT statement pursuant to § 14c (1) UStG. The mobile telephone company must not deduct the input tax. Again, the BMF liaises with the BFH.

Please note:
The regulation applies to all open cases. With regard to transactions executed before 1 January 2015, there is no objection if the two parties have mutually assumed a payment for an agency service provided by the agent with regard to the device premium. This non-objection applies also for purposes of the input tax deduction of the mobile operator. If the client is not required to pay a fee for the device, the non-objection depends on whether the agent has paid taxes for a transaction as a benefit in kind before 1 January 2013. However, the non-objection with regard to the period from 1 January 2013 depends on whether the agent has not deducted the input tax from the purchase of the devices handed over to the clients (see BMF guidance of 2 January 2012, VAT Newsletter January/February 2012).

Limitation of no-objection policy for combined print and digital packages sold prior to 1 July 2014

BMF guidance of 19 December 2014 – IV D 2 – S 7200/13/1005

Further to its guidance dated 2 June 2014 (see VAT Newsletter July 2014), the BMF has issued new guidance to industry associations with regard to packages combining print newspapers/magazines and electronic newspapers.

BMF guidance dated 2 June 2014
The BMF stated that while sales of printed newspapers and magazines are ordinarily subject to the reduced rate of VAT, the provision of access to e-newspapers is taxable at the normal rate. If access to an electronic version is sold concurrently with the printed newspaper or magazine, the consideration will need to be apportioned accordingly. If the recipient has to make a separate payment for additional access to the e-newspaper, this will form the assessment basis for the supply of services made to the recipient. If no separate payment is calculated for access to the e-newspaper, the total selling price must be apportioned in accordance with section 10.1 (11) UStAE. In accordance with this provision, the key figure is the ratio of the individual selling prices; however, other equally simple methods are permitted provided that they generate suitable results. The BMF points out that its guidance of 28 November 2013 (see VAT Newsletter January/February 2014) only instituted a limited no-objection policy lasting until 1July 2014.

BMF guidance dated 19 December 2014
The application of the no-objection rule to bundled print and digital packages of newspapers and magazines by the tax authorities, as previously understood by industry associations, is now set to change. The tax authorities will now require the apportionment of sales carried out prior to 1 July 2014. The no-objection rule will only apply if the supplier, in apportioning sales between print media subject to a discounted rate and digital content taxable at the standard rate, uses a calculation or measurement method other than that set out in the BMF guidance dated 28 November 2013 and if the method used is fair and proper.

According to the BMF, printed book and e-book packages sold as a bundle for a combined price prior to 1 January 2016 will be taxable, in aggregate, at the reduced rate of VAT (see BMF guidance dated 1 December 2014, VAT Newsletter December 2014). The BMF has declined to extend this principle to bundled packages of print newspapers and magazines and e-newspapers.

Please note:
In its guidance dated 19 December 2014, the BMF also affirmed that the rules requiring apportionment at different rates of VAT apply to suppliers in all sectors which offer service packages at a unit price (see BMF guidance dated 28 November 2013). The associations believe that narrowing the scope of the no-objection policy for sales of newspapers/magazines prior to 1 July 2014 is inconsistent with the understanding reached with the relevant BMF representatives prior to 2 June 2014. They demanded a non-objection rule for assuming a single supply, taxable, in aggregate, at the reduced rate of VAT. However, according to a letter of Dr. Michael Meister, Parliamentary State Secretary at the BMF dated 27 January 2015 to the associations this request cannot be accepted.

NEWS FROM THE LEGISLATION

Law on the adaption of the German Tax Code (AO) to the Customs Code of the Union and on the change of further tax provisions

Law of 22 December 2014, Federal Law Gazette I 2014, p. 2417

On 4 December 2014, the Bundestag (lower house of the German Parliament) has decided on the Law on the Adaption of the German Tax Code (AO) to the Customs Code of the Union and on the Change of Further Tax Provisions (see VAT Newsletter December 2014). The law was approved by the Bundesrat (upper house of the German Parliament) on 19 December 2014. The publication in the Federal Law Gazette was on 30 December 2014. With regard to the VAT changes, the law comes into effect on the following different dates:

Entry into force as of 31 December 2014	
Expansion of the rules regarding the place of supply applicable to specific banking and insurance transactions with regard to recipients of the supply located in a non-Member State in accordance with the CJEU ruling of 19 July 2012 – case C-44/11 – Deutsche Bank AG, see VAT Newsletter August/September 2012, such as portfolio management services involving securities.	§ 3a (4) sent 2 no. 6 (a) UStG
Limitation of the reverse charge mechanism with regard to taxable natural gas supplies provided in Germany to cases where the recipient of the supplies is a retailer within the meaning of § 3 g UStG	§ 13b (5) sent. 3 UStG

Entering into force as of 1 January 2015	
Changes of the implemented rules regarding the place of performance in conjunction with telecommunication services, radio and television services as well as electronically supplied services to customers not liable to VAT.	§ 3 a (6) sent. 1 no. 3 UStG
Expansion of VAT exemption for hospital and medical care to institutions that have concluded contracts for supplying non-physician dialysis services pursuant to §§ 127 in conjunction with 126 (3) German Social Code Book V (SGB V).	§ 4 no. 14 (b) sent. 2 ff) UStG
New regulation of the basic certificates issued for VAT-exempt cultural services by non-tax authorities.	Revocation of § 4 no. 20 a) sent. 4 UStG, change of § 171 (10) AO
Limitation of the extension of the tax liability for the recipient of precious metal and base metal, selenium and cermet supplies as of 1 October 2014: The minimum total amount of the fees to be charged for the supply within the framework of an economic transaction must be EUR 5,000. Any subsequent fee reductions will remain unaffected. Streaming Annex 4: Selenium, wire, tapes, films, sheets and other flat-rolled products, profiles and bars (rods) are no longer included in Annex 4.	§ 13 b (2) no. 11 UStG, Annex 4
Introduction of a quick reaction mechanism to enlarge the reverse charge mechanism.	§ 13b (10) UStG
Monthly filing of preliminary VAT returns in case of shelf companies and acquired shell companies as with company establishments.	§ 18 (2) sent. 5 UStG

Please note:
The BMF has already commented in its guidance of 11 December 2014 on the new regulations for telecommunication services, radio and television services and electronically supplied services as of 1 January 2015. Furthermore, the BMF guidance of 22 January 2015 provides an expanded non-objection regulation for the application of the reverse charge mechanism with regard to the supply of specific metals (§ 13b no. 11 UStG). We will present both BMF guidance to you in this newsletter.

IN BRIEF

Provision of football stadium in return for payment

Court of Justice of the European Union (CJEU) ruling of 22 January 2015 – case C-55/14 – Régie communale autonome du stade Luc Varenne

The ruling refers to the company called Régie resident in Belgium that operates the football stadium "Luc Varenne". The purchase of the stadium was VATable. It entered into a contract with a football association, according to which the association is allowed to use the equipment of the football stadium in return for payment. In accordance with the contract, the company as the owner reserved specific rights and authorizations and was obliged to provide specific services, which contained – inter alia – the maintenance, cleaning, care and provision and for which 80 % of the contractually stipulated consideration is used. It is in dispute whether such transfer constitutes a VAT-exempt rent of property pursuant to Art. 13 part B (b) of the Sixth EC Directive (now Art. 135 sec. (l) of the VAT Directive (MwStSystRL)) that does not grant the right to deduct the input tax payable for the purchase of the equipment. The CJEU denies this principally subject to the facts to be assessed by the referring Belgian court. It is not evident to the CJEU that there are special circumstances, which would allow the conclusion that the use of the football field as VAT-exempt rental of a property is the decisive service of the transaction.

Participation in VAT evasion in the context of a chain of supplies

CJEU, ruling of 18 December 2014 – case C-131/13, C-163/13 and C-164/13 – Schoenimport „Italmoda" Mariano Previti vof et al.

In this case, the Dutch company Italmoda acquired computer hardware in the Netherlands and Germany and supplied this to a business in Italy. With regard to the goods acquired in the Netherlands, which were subject to VAT, Italmoda claimed the VAT charged as input tax as well as zero-rating pertaining to intra-Community supplies of goods to Italy. The goods originating in Germany were purchased by Italmoda under the Netherlands VAT identification number of that company, although they were transported directly from Germany to Italy. Italmoda did not declare either its intra-Community supply of goods to Italy in Germany or its intra-Community acquisition of goods in the Netherlands due to the use of its VAT identification number. The Italian customers did not declare any of the intra-Community acquisitions with regard to the goods supplied from the Netherlands and Germany. The Italian tax authorities refused those purchasers the right to deduct and proceeded to collect the acquisition tax. The Netherlands tax authorities took the view that Italmoda had knowingly participated in fraudulent activity designed to evade VAT in Italy. They

therefore refused Italmoda the right to zero-rating in respect of the intra-Community supplies of goods and the right to deduct input tax in respect of the goods purchased in the Netherlands. They also refused to allow any refund of the acquisition tax paid in respect of the goods originating in Germany.

With regard to the supplies from Germany, the Court of Justice of the European Union (CJEU) did not address the issue of whether Italmoda had made intra-Community supplies of goods to Italy as the intermediate supplier in a chain transaction (see most recently the Tax Court of Saxony ruling of 12 March 2013, 2 K 1127/13; BFH ref. no.: XI R 15/14; VAT Newsletter August/September 2014). The CJEU did not make any assessment as to the allocation of the moving supply in the chain transaction, which, by itself, potentially constitutes a zero-rated intra-Community supply of goods.

Instead, the CJEU responded solely to the questions referred for a preliminary ruling. The CJEU held that EU law must be interpreted as meaning that it is for the national authorities and courts to refuse a supplier, the benefit of the rights to deduction of acquisition tax, zero-rating or refund of VAT, if it is established, that the supplier knew that it was participating in VAT evasion committed in the context of a chain of supplies. This would also apply even in the absence of provisions of national law providing for such refusal, as is the case in the Netherlands. Such rights of zero-rating, deduction or refund could also be refused if the VAT evasion occurred in another Member State.

Sale of a share in property as a zero-rated intra-Community supply of goods

Berlin-Brandenburg Tax Court, ruling of 9 October 2014, 5 K 5225/12; BFH ref. no.: V R 53/14

The ruling addresses the issue of whether the sale of a share in the ownership of movable property can be treated as a zero-rated intra-Community supply of goods.

The case concerned an art dealer who purchased a valuable book at auction in 2008, and subsequently sold a 50 % share in the book to a gallery in another Member State. The gallery collected the book and initially exhibited it in the other Member State. Following a further exhibition in 2010, the book was sold to a US library, which required the art dealer to sell the 50 % share he had retained to the gallery. The art dealer treated the sales of both shares as zero-rated intra-Community supplies of goods. The ruling solely concerned the first sale in 2008. The tax authorities ultimately took the view that the sale of the share did not qualify as a supply of goods, but fell into the category of services. The findings of the tax authorities were based on the BFH ruling of 27 April 1994, XI R 91-92/92 and section 3.5 (3) no. 2 UStAE. According to the tax authorities, the service pursuant to § 3a (1) UStG, as then in force, was performed in the place from which the supplier carried on business. As a result the supply would be not zero-rated and therefore taxable in Germany. However, having considered the CJEUruling of 15 December 2005 – case C-63/04 – Centralan Property Ltd., the Tax Court held that a share in property may form part of a supply of goods, including an intra-Community supply of goods. An appeal was lodged against this decision. In a recent ruling dated 28 August 2014, V R 49/13 (see VAT Newsletter December 2014), the BFH left open whether it would uphold its earlier rulings.

Retroactive effect of correction of an invoice beyond § 14c UStG?

Lower Saxony Finance Court, ruling of 23 October 2014, 5 K 140/14; Hamburg Finance Court, ruling of 20 October 2014, 2 V 214/14

The Lower Saxony Finance Court referred the question to the CJEU in a ruling of 3 July 2014 whether and under which circumstances a retroactive effect of correction of an invoice (beyond § 14c UStG) is possible (see VAT Newsletter December 2014).

With the following ruling of 23 October 2014, the Lower Saxony Finance Court repeatedly holds the view in another case that the retroactive effect of correction of the invoice requires at least that in the first invoice issued the supplier, the recipient of the supply, the description of the supply and the payment amount with the VAT are correctly stated.

Also, the Hamburg Finance Court liaises with the Lower Saxony Finance Court in its ruling of 20 October 2014 in the proceedings for a preliminary injunction that a retroactive effect on the correction of invoice to the date of the invoice is possible insofar as the correction was made before an appeal was granted. An appeal was admitted before the BFH against both rulings.

Correction of an invoice due to excess VAT statement pursuant to § 14c (1) UStG

Lower Saxony Finance Court, ruling of 25 September 2014, 5 K 99/13; ref. no. of the BFH: XI R 43/14

A British Company acting as an implementation company rented out trade fair and exhibition stands in Germany in the years 2007 to 2009. It had rented the stand floors from the event organizers of the trade fairs or exhibitions. Among others, it supplied these services to a recipient resident in Germany, who was liable to tax pursuant to § 13b UStG. The invoice included VAT, as a result of which the British company was also liable to VAT pursuant to § 14c (1) UStG. Hence, in the case year 2012, it issued corrected invoices, which the recipient of the supplies obviously did not receive. The Finance Court took the view that it was not necessary to actually receive the invoices, because the company had clearly and explicitly informed the recipient of the supplies that the services will be supplied without VAT

(net) and that for this reason the VAT needs to be corrected. The Finance Court held this to be satisfied due to the corresponding email communication and subsequent offsetting of the refund resulting from the invoice correction. According to the Finance Court, in this case even a refund of the VAT was made to the recipient of the supplies, which is required for an invoice correction contrary to the previous BFH rulings (ruling of 11 October 2007, V R 27/05). An appeal was filed against the ruling.

EVENTS

VAT 2015 – Current Hot Topics

At the stated locations, KPMG specialists will inform you about the current developments in the field of VAT. Our focus will be on the innovations of the legal situation and selected rulings of the CJEU and BFH as well as their interpretations by the German Finance Courts. We will deal with pitfalls and show solutions. We will add to this overview the presentation of selected administrative guidance.

3 March 2015 – Frankfurt / Main
3 March 2015 – Cologne
4 March 2015 – Braunschweig (Breakfast Meeting)
5 March 2015 – Bielefeld
5 March 2015 – Göttingen (Breakfast Meeting)
10 March 2015 – Dortmund
10 March 2015 – Munich
11 March 2015 – Mannheim
11 March 2015 – Hannover
16 March 2015 – Stuttgart
17 March 2015 – Düsseldorf
18 March 2015 – Berlin
24 March 2015 – Freiburg
25 March 2015 – Karlsruhe
25 March 2015 – Nürnberg
25 March 2015 – Leipzig
26 March 2015 – Aachen
20 April 2015 – Hamburg
21 April 2015 – Kiel (Breakfast Meeting)
22 April 2015 – Bremen

For more information please click here.

Contacts

KPMG AG
Wirtschaftsprüfungsgesellschaft

Head of Indirect Tax Services
Dr. Karsten Schuck
Frankfurt am Main
T + 49 69 9587-2819
kschuck@kpmg.com

Berlin
Martin Schmitz
T + 49 30 2068-4461
martinschmitz@kpmg.com

Duesseldorf
Peter Rauß
T + 49 211 475-7363
prauss@kpmg.com

Frankfurt / Main
Prof. Dr. Gerhard Janott
T + 49 69 9587-3330
gjanott@kpmg.com

Wendy Rodewald
T + 49 69 9587-3011
wrodewald@kpmg.com

Ursula Slapio
T + 49 69 9587-2600
uslapio@kpmg.com

Hamburg
Gregor Dzieyk
T + 49 40 32015-5843
gdzieyk@kpmg.com

Kay Masorsky*
T + 49 40 32015-5117
kmasorsky@kpmg.com

Antje Müller
T + 49 40 32015-5792
amueller@kpmg.com

Cologne
Peter Schalk
T + 49 221 2073-1844
pschalk@kpmg.com

Munich
Dr. Erik Birkedal
T + 49 89 9282-1470
ebirkedal@kpmg.com

Günther Dürndorfer*
T + 49 89 9282-1113
gduerndorfer@kpmg.com

Kathrin Feil
T + 49 89 9282-1555
kfeil@kpmg.com

Claudia Hillek
T + 49 89 9282-1528
chillek@kpmg.com

Stuttgart
Dr. Stefan Böhler
T + 49 711 9060-41184
sboehler@kpmg.com

* Trade & Customs

International Network of KPMG

If you would like to know more about international VAT issues please visit our homepage KPMG International**. On this website the periodical KPMG publication "Global Indirect Tax Brief" (KPMG International) are published. We would be glad to assist you in collaboration with our KPMG network in your worldwide VAT activities.

You can also get up-to-date information via our homepage.

**Please note that KPMG International does not provide any client services.

Imprint

Issuer
KPMG AG Wirtschaftsprüfungsgesellschaft
THE SQUAIRE, Am Flughafen
60549 Frankfurt / Main

Editor
Ursula Slapio (Responsible***)
T + 49 69 9587-2600
uslapio@kpmg.com

Thomas Claus
T + 49 69 9587-4676
tclaus@kpmg.com

Christoph Jünger
T + 49 69 9587-2036
cjuenger@kpmg.com

MwSt.VAT Newsletter – Free Subscription
To subscribe, please register at
www.kpmg.de/newsletter/subscribe.aspx

www.kpmg.de

*** Responsible according to German Law (§ 7 (2) Berliner PresseG)