

VAT deduction with a non-compliant invoice?

Following the general principles a VAT payer does not have right to deduct input VAT without a compliant invoice. Recent case law from the European Court of Justice has shown that VAT deduction cannot be refused on the sole basis that some mandatory invoicing requirements are not quoted on the invoice. If the VAT payer by other means can prove that all material conditions are fulfilled, this would be sufficient to deduct the VAT.

General principle

No VAT deduction without an invoice. That is the main rule. Both according to the Belgian legislation as to European law, VAT is only deductible provided that the VAT payer holds a compliant invoice. A number of mandatory requirements should be quoted on the invoice. These are a.o.:

- scope and nature of the services provided;
- date of issuance or drafting of the invoice;
- VAT rate;
- identity and address of the VAT payer making the supply of goods or services;
- ...

No fixed period indication on the invoice

One of the mandatory invoicing requirements is the scope and the nature of the services provided.

Example

A Portuguese VAT payer quotes on his invoice: 'Legal services during the period from ... until now'. Subsequently the client deducted the VAT on the invoice.

In this example the local VAT authorities argued that the invoice was not compliant, since on the basis of the description the scope of the services provided cannot be determined sufficiently. Both start and end date should be quoted on the invoice when it relates to continuous services.

Nevertheless VAT deduction

The Court of Justice however takes a peculiar position: VAT deduction cannot be refused solely because the invoice is not compliant. If it can be shown that the VAT deduction is correct, the VAT office should accept this deduction, even when there is a formal defect. When examining the invoice the VAT authorities should take all available information on the invoice or obtained otherwise from the VAT payer into consideration.

However non-compliance with the mandatory invoicing requirements can still have negative consequences for a VAT payer. The VAT authorities have after all the possibility to impose a fine or other monetary sanction in case of non-compliance with these obligations.

We have to wait somewhat longer to really understand what the above will mean in practice.