

VAT authorities concede: non-compliant or incomplete invoice does not exclude VAT deduction

Recently, the European Court of Justice has taken a smoother position towards the requirements for a valid invoice. Consequently VAT payers can deduct input VAT without holding a fully correct invoice. The Belgian tax authorities have now conceded. This is confirmed in a circular letter of 12 October 2017.

Material and formal conditions for VAT deduction

The **material condition** in order to have right to deduct VAT is that the goods/services are used to perform taxable transactions. E.g. a plumber buys material: the VAT which he pays on the purchase is deductible since he used it for his economic, taxable activity. That is why VAT payers performing only VAT exempt transactions where no VAT is charged to their clients do not have right to deduct VAT. E.g. a doctor cannot deduct the VAT which he paid for the decoration of his cabinet.

No changes made on this material condition.

The **formal condition** is that a VAT payer should hold complete and compliant invoices in order to exercise the right to deduct VAT. In this respect the European Court of Justice has made some changes during the past years. In case the VAT payer complies with all material conditions, but has an incomplete invoice, this (minor) defect is in itself not sufficient to disallow the deduction. This is also called substance over form.

Tax authorities follow Europe

In Europe there is a tendency to be less strict towards formal defects. Which the Belgian tax authorities now admit. On 12 October 2017 a circular letter was published stating they will follow the substance over form principle.

This means that the tax authorities will allow VAT deduction even when the VAT payer holds an **incomplete or invalid invoice**. Condition however is that the VAT payer can in such case provide **additional information** (corrected invoice, contracts, purchase orders, offers, correspondence) in order to allow the tax authorities to verify that the VAT payer has right to VAT deduction.

The VAT payer has in such case the time until the end of the VAT audit to provide this additional information.

If the VAT payer has committed fraud, or knew or should have known that he was involved in fraudulent transactions, this easing is not applicable. The VAT payer will not have any deduction right.

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