



VAT alert

Belgium

Requirement of compliant invoice for VAT deduction: Belgian tax authorities adapt guidance

On 12 October 2017, the Belgian VAT authorities published a [Circular Letter](#) providing guidelines regarding the requirement of a compliant invoice, to ensure the right to deduct incoming VAT.

Legal requirements and European case law developments

In principle, a taxable person does not have the right to deduct input VAT charged by his suppliers without an invoice complying with the formal requirements of article 226 of the VAT Directive (article 178 VAT Directive and article 3 Belgian Royal Decree n° 3).

However, recent case law from the Court of Justice of the European Union (CJEU) has shown that VAT deduction cannot be refused on the sole basis that certain mandatory invoicing requirements are missing from the invoice. The VAT authorities cannot restrict themselves to examining the invoice itself, but must also take into account additional information provided by the taxable person. If a taxable person can prove, by any other means, that all material conditions are fulfilled, the input VAT should be deductible. CJEU case law confirms the 'substance over form' principle when applying the right to deduct VAT.

Belgian tax authorities abandon strict position

In the past, the Belgian tax authorities have always taken a strict view on the need for a compliant invoice to allow VAT deduction. If the invoice is not regular or incomplete, with respect to the provisions of Belgian Royal Decree n° 1, the VAT authorities generally rejected the deduction of VAT.

In VAT audits, the above has frequently triggered a taxpayer obligation to reimburse incorrectly deducted VAT, increased by penalties and interests. However, as long as the taxpayer was able to obtain a corrected/completed invoice from his supplier within the prescription period, the input VAT could in many cases be recovered in a later VAT return.

Following European case law, which directly affects Belgian legislation, the Belgian tax authorities felt the need to change their position regarding this problem.

Going forward, if an invoice is not compliant and/or incomplete according to requirements, the VAT authorities will evaluate whether the taxpayer correctly deducted the input VAT on such invoice, based on (1) a corrective invoice and/or (2) additional evidence that unambiguously relates to the concerned invoice.

Such corrective invoice and/or additional evidence have to be provided in a timely manner to the VAT authorities; more specifically, before the VAT audit is finalised.

To allow VAT deduction, there should also be evidence that the substantive conditions for the right to deduct are met. Deduction of input VAT can be denied where the taxable person knew or should have known that a transaction was subject to fraud.

Implications for businesses

The Belgian VAT authorities' shift in viewpoint is in line with European case law and does not create new rights for businesses. However, it is very important that the VAT authorities have laid this down in a Circular Letter, which will have a significant impact on the way in which VAT audits will be conducted going forward.

The mere finding of non-compliant invoices no longer triggers a regularisation at the taxpayer's cost. Instead, it opens a window for the taxpayer to obtain and provide corrective invoices or circumstantial evidence, preserving the VAT deduction executed on the invoice.

While the issuing of compliant invoices and the verification that compliant invoices are received definitely remains a best practice, businesses that take the necessary precautions to obtain the necessary additional evidence during audits will be in a more favourable position in the future.

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