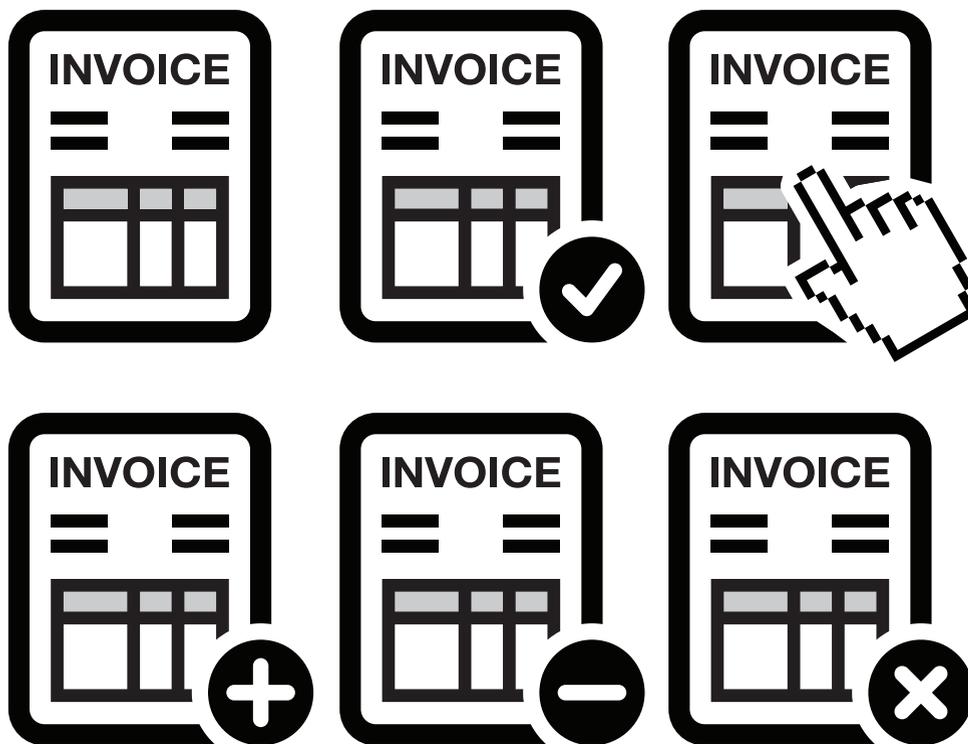




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## Latest EU Developments in Relation to VAT Recovery



### Introduction

My *Irish Tax Review* article “The Realities of VAT Compliance - A Case Study”<sup>1</sup> explored the common difficulties that companies encounter during the VAT compliance process. In ensuring that your company “gets it right” from a VAT compliance perspective, one of the

points discussed was in relation to maintaining supporting VAT documentation and ensuring that valid VAT invoices are obtained to support a claim for VAT recovery. In this article I outline the requirements of a valid VAT invoice and consider relevant recent judgments of the Court of Justice of the European Union (CJEU) and the potential impacts for companies.

<sup>1</sup> Ruth Linehan, “The Realities of VAT Compliance - A Case Study”, *Irish Tax Review*, 29/3 (2016), pp 73-6.

## VAT Invoicing Requirements

VAT invoices are fundamental documents in the VAT system: they set out the details of the taxable supply and other related information. VAT invoices evidence the supplier's liability and provide the purchaser with the deduction entitlement. There are, as a consequence, detailed legislative provisions relating to the form, content and timing of invoices. The VAT Regulations set out the key legislative requirements of a valid VAT invoice, which are:

- supplier's name, address and VAT number,
- customer's name and address,
- date of issue,
- unique sequential invoice number,
- breakdown by the rate of VAT,
- total amount of VAT payable stated in Euro,
- VAT-exclusive unit price,
- payment received net of VAT,
- discounts or price reductions,
- quantity and nature of the goods supplied,
- extent and nature of the services rendered,
- if the supply is subject to reverse-charge rules, a reference to the "reverse charge" and the customer's VAT number,
- in the case of an intra-Community supply of goods, the customer's VAT number and a reference that this is an "intra-Community supply of goods",
- date on which the goods/services were supplied and
- in the case of early payment, before completion of the supply, the date on which the payment on account was made, if that date differs from the date of issue of the invoice.

Where any one of the requirements of a valid VAT invoice is missing, Irish Revenue may seek to impose penalties on the supplier and to disallow VAT recovery for the customer on the invoice. These legislative requirements have been considered in some detail in a

number of recent decisions of the CJEU, as outlined below.

## Recent Decisions of the CJEU

On 15 September 2016 the CJEU gave its decisions in two cases involving invoice requirements – namely, the right to input credit and the content of invoices – and in both cases the court ruled in favour of the taxpayer.

### Senatex GmbH v Finanzamt Hannover-Nord

The first of these cases was *Senatex GmbH v Finanzamt Hannover-Nord* C-518/14, which dealt with corrections made to VAT invoices and the impact of these in respect of VAT deduction. The VAT Directive provides that, for an entitlement to input credit to arise, a taxable person must hold a VAT invoice containing certain details, one of which is the VAT number of the supplier. German legislation provides for similar requirements. German case law provides that input VAT paid may be deducted only in the tax period in which all of the substantive conditions for the exercise of that right are satisfied. It also provides generally that an invoice can be corrected if it does not contain all of the information or if the information is inaccurate and that such correction can be carried out by a document that specifically and clearly refers to the invoice. In addition, it provides that corrections to invoices are effective for the period in which the corrected invoice is transmitted to its addressee or in which the application for correction is granted.

Senatex is a wholesale textile business based in Germany. Senatex reclaimed VAT on commission statements from its sales representatives and on invoices from a designer. In 2013 the German tax authority performed numerous spot checks of the accuracy of Senatex's tax returns and discovered that these particular invoices did not show the supplier's VAT number. Senatex corrected the documents (in 2013 for those relating to 2009-11 and in 2014 for those

relating to 2008). The German tax authority took the view that the lack of the supplier's VAT number on the original documentation at the time that the claims were made meant that they were invalid, and that the input tax claims could therefore be reinstated only when corrected invoices were available. This meant that Senatex obtained a deduction once the invoices were corrected, but the disallowance of the original claims resulted in the imposition of interest.

The CJEU held that the right to VAT deduction must be allowed when VAT is paid in the course of economic activities as long as the substantive VAT invoicing requirements have been met. In this case, as the supplier's VAT number was only a formal requirement, the right to deduct arose at the moment when all substantive requirements were met. Senatex was therefore allowed to deduct VAT from the moment that the original invoice was received. The CJEU also decided that the German legislation relied on to disallow the original input tax claims is precluded by EU law, so that, in effect, the correction of the invoices had retrospective effect and validated the original claims.

### **Barlis O6 – Investimentos Imobiliários e Turísticos SA v Autoridade Tributária e Aduaneira**

This position was reinforced by a second CJEU decision issued on the same day. The Portuguese case of *Barlis O6 – Investimentos Imobiliários e Turísticos SA v Autoridade Tributária e Aduaneira* C-516/14 concerned the description of supplies shown on a VAT invoice. Barlis, based in Lisbon, ran hotels and restaurants. It received VAT invoices from its lawyer in which the services were described as “legal services” and the range of dates of supply of those services was given. Barlis claimed an input deduction in respect of the invoices. The Portuguese tax authority claimed that the description on the invoices was insufficient and disallowed the input VAT claimed by Barlis. Under the Portuguese legislation, “invoices must contain ‘the common name of the goods or services supplied,

together with specification of the information necessary to determine the applicable tax rate’”. The CJEU agreed that the description “legal services” was not detailed enough and might not be sufficient to identify the nature of the supply, and that invoices that do not specify a beginning and an end date for the supplies do not conform to EU VAT invoicing requirements. However, although the judgment confirms that, on the face of it, the invoices were deficient, the CJEU went on to say that EU law does not allow the refusal of input tax where the tax authority has all of the information needed to validate the claim, even when there are defects in the actual invoicing.

### **RGEX GmbH, in liquidation, represented by Rochus Geissel, Liquidator v Finanzamt Neuss**

Most recently, this matter was revisited in the joined cases of *RGEX GmbH, in liquidation, represented by Rochus Geissel, Liquidator v Finanzamt Neuss* C-374/16 and *Finanzamt Bergisch Gladbach v Igor Butin* C-375/16. Here, two car dealers in Germany were purchasing cars from suppliers who showed only letterbox addresses on their invoices. The car dealers recovered the VAT on these invoices. Under German legislation the principal place of business is required to be shown on any invoice. The CJEU in this case determined that this requirement was too strict and that a letterbox address is a valid address for the purposes of the VAT Directive invoicing rules.

In summary, these cases indicate that the formal VAT invoice requirements for VAT deduction have been eased. As the CJEU pronounces on principles that must be used in interpreting the VAT Directive, and the Directive governs the VAT law of all EU jurisdictions, these CJEU decisions are relevant in each Member State, including Ireland.

### **Conclusion**

Although these recent judgments of the CJEU indicate that formal invoice requirements for input VAT deduction have been relaxed, it is advisable that companies do not relax their

invoicing procedures or invoice monitoring procedures, as it remains to be seen how Irish Revenue will apply this case law.

It remains important, therefore, that companies are satisfied that they are receiving valid VAT invoices when making claims for repayment of VAT. Companies should be vigilant and actively monitor and check whether purchase invoices received meet the requirements of the Regulations to protect their entitlement to VAT recovery and avoid the imposition of interest and penalties for incorrectly reclaimed VAT. Where a purchase invoice is missing any of the required information, the taxpayer should request that the supplier reissue the invoice to include the required details. In relation to VAT on sales, the taxpayer should also ensure that valid VAT invoices are issued to its customers.

For parties that have been denied input VAT deduction or have been requested to pay VAT-related interest on the basis of formal deficiencies of invoices, it is worth considering the recent CJEU rulings in more detail, as it may be possible not only to successfully appeal related tax assessments and claim the input VAT but also to challenge the imposition of interest for perceived late payment of VAT.

Read more on **taxfind** From Irish Tax Institute *VAT and VAT on Property, Finance Act 2016; Law of VAT, Finance Act 2016; Practical VAT, RCT & Payroll Taxes for the Corporate Sector, Seminar Paper, June 2017; The Realities of VAT Compliance - A Case Study, Irish Tax Review, Issue 3, 2016*