

# Global Tax Update

## Germany

Deloitte Tohmatsu Tax Co.

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### CJEU rules on timing of input VAT deduction on corrected invoice

#### **Input VAT recovery from corrected invoice already available from time original invoice issued**

The Court of Justice of the European Union (CJEU) issued a decision on September 15, 2016 in a German case (Senatex GmbH (C-518/14)) involving the effect of corrections made to VAT invoices.

Senatex reclaimed VAT on commission statements from its sales representatives and on invoices from a designer, but the documents relied on to evidence the claims were not valid VAT invoices, because they lacked the supplier's tax/VAT number. Although the relevant numbers subsequently were added to the documents, the German tax authorities took the position that the absence of the number on the original documentation at the time the claims were made meant that they were invalid and that the input tax claims could be made only from the time the invoices were corrected. As a result, the taxpayer was required to bear interest for the period between the receipt of the initial invoice and the date the invoice was corrected.

The CJEU disagreed with the tax authorities, concluding that the German legislation relied on to disallow the original input tax claims is precluded by EU law, so that, in effect, the later correction of the invoices had retroactive effect and validated the original claims.

The principle of neutrality of the VAT system requires that a VAT deduction be allowed if the substantive requirements for the deduction are met, even if certain formal requirements (e.g. including the VAT ID number on the invoice) are not met. The EU VAT directive allows member states to impose penalties for failure to comply with formalities, but the penalty may not be the disallowance of a VAT deduction and the imposition of interest that bears no relationship to the severity of the transgression. According to the CJEU, the German rules that postpone the right to a VAT deduction until the year the invoice is corrected

and impose interest during that period go further than is necessary to achieve the compliance objective.

Germany's Federal Tax Court now will have to reconsider its position that a VAT invoice generally is a substantive requirement rather than a mere formality for the right to deduct input VAT.

The issue of whether EU member states are permitted to set a time limit to correct an invoice remains unsettled and will be subject to further judicial determination. It remains further to be clarified which type of invoice content might be corrected without jeopardizing input VAT recovery as from the beginning- potentially the lack of essential information might not be corrected with retroactive effect.

Taxpayers that have been denied input VAT deductions as a result of incorrect or incomplete VAT invoices and that have paid interest relating to such claims should assess whether there is a possibility to challenge the disallowance and the interest charge.

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