

VAT CANNOT BE RECOVERED WITHOUT A SUFFICIENT INVOICE

This is to let you know that the Court of Justice of the European Union ("CJEU") is soon to resolve the question of what level of detail is sufficient in an invoice to support the customer's right to recover VAT stated in that invoice. Advocate General Juliane Kokott already submitted her opinion in February 2016 (case C-516/14).

A Portuguese court for tax arbitration turned to CJEU with a question whether a description on an invoice which states 'legal services rendered from such a date until the present date' or merely 'legal services rendered until the present date' is sufficient to enable recovery of VAT stated in that invoice. The Portuguese tax authorities which investigated this case denied the right of deduction on the argument that the invoices concerned do not meet the requirements of Article 226(6) and 226(7) of VAT Directive as to the statement of the nature and extent of the services and of the date on which the supply was made or completed.

In Advocate General's opinion, the invoice description "legal services" is generally sufficient as a statement of the nature of the services. However, this is subject to a proviso that the national law of the Member State concerned does not provide special rules for taxation of certain transactions, such as reduced VAT rate on a selected category of legal services. If it does, then such description will not be sufficient to clearly determine the extent of the services and their tax treatment. Advocate General further argues that an invoice that is silent on when the supply of services began will not comply with the VAT Directive's requirement to state the "date" when the supply was made or completed.

As it does not comply with VAT Directive's requirements, an insufficient invoice does not entitle the customer to recover the related VAT. He will become entitled to do so if the supplier gives him another invoice that will adjust the details on the original invoice. However, even if the tax authority is offered documents that provide the missing information, these will not be sufficient if they cannot be regarded as being part of an invoice itself.

Although Advocate General's opinions are not binding on CJEU, it will typically adjudicate according to the position expressed in the opinions.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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