



## Special Circular 01/2011

Content			
<b>I. Importance of invoices for the deduction of input tax</b>	<b>P. 2</b>	8. Charges	<b>P. 7</b>
<b>II. Definition and format of invoices</b>	<b>P. 2</b>	9. Tax rate and tax amount	<b>P. 7</b>
1. Definition of invoice	<b>P. 2</b>	<b>IV. Particularities</b>	<b>P. 8</b>
2. Format of invoices	<b>P. 3</b>	1. Low values invoices	<b>P. 8</b>
3. Obligations for the preparation of invoices	<b>P. 3</b>	2. Tickets	<b>P. 9</b>
<b>III. Mandatory invoice information</b>	<b>P. 3</b>	3. Credit notes	<b>P. 10</b>
1. Address and name of the service provider	<b>P. 3</b>	4. Continuous performance agreements as invoices	<b>P. 10</b>
2. Name and address of the beneficiary	<b>P. 4</b>	5. Payments on account	<b>P. 10</b>
3. Tax number	<b>P. 5</b>	6. Integrated companies	<b>P. 11</b>
4. Invoice date	<b>P. 5</b>	7. Reverse charge (tax liability of the beneficiary)	<b>P. 11</b>
5. Consecutive invoice numbering	<b>P. 5</b>	<b>V. Incorrect invoices and adjustments</b>	<b>P. 11</b>
6. Description of service provided	<b>P. 5</b>	1. Consequences of incorrect invoices	<b>P. 11</b>
7. Time of supply	<b>P. 6</b>	2. Adjustments	<b>P. 12</b>
		<b>VI. Safekeeping of invoices</b>	<b>P. 13</b>

## **I. Importance of invoices for the deduction of input tax**

An owner can deduct the VAT invoiced as input tax, if the service has been provided for his company and a correct invoice has been issued. Input tax may then be deducted during the VAT accounting period (month or quarter) in which the invoice is issued. Input tax may also be deducted if the owner makes a payment on account prior to the provision of the service based on a correct invoice (see section IV. 5.).

If the invoice is incorrect, due to certain mandatory information being omitted or inaccurate, the deduction of input tax is threatened. During external audits or special VAT audits, the tax authorities examine in great detail whether or not the invoices satisfy all of the requirements for the deduction of input tax. If this is not the case, it is possible that the claimed input tax plus interest on the back duty of 6% per annum may be reclaimed.

## **II. Definition and format of invoices**

### **1. Definition of invoice**

An invoice is understood to be any document that details the charges for a supply of goods or other service. It is irrelevant whether or not this document is indicated as an invoice.

An invoice, therefore, can also be an agreement that contains the information required, e.g. a maintenance contract detailing the maintenance charges and the separate VAT as well as the other mandatory information. For information on continuous performance agreements see section IV. 4.

However, invoices do not include documents that only concern payment transactions, e.g. reminders or account statements. This applies, even if they contain all of the required mandatory information. Delivery notes are also not classed as invoices.

An invoice can consist of several documents. However, one of the documents must summarise the charges and the VAT amount payable on this. This document must also make reference to all other documents that contain the remaining mandatory information.

If a bank invoices its services by means of an account statement, the account statement is classed as an invoice.

## **2. Format of invoices**

Invoices can be sent on paper or by fax or, if permitted by the beneficiary, electronically, e.g. by e-mail. This authorisation for electronic transmission does not impose any stringent requirements: Simply a general agreement between the beneficiary and invoicing party that the invoice is to be sent electronically. This agreement can be made on the basis of a framework agreement or retrospectively. An implicit agreement is also sufficient.

It is important that the invoice satisfies certain technical requirements when sent electronically: The electronic invoice must

- bear either a validated digital signature or a validated digital signature from a provider accredited in accordance with the German law on electronic signatures, or
- are sent using the EDI process (Electronic Data Interchange in accordance with European laws).

## **3. Obligations for the preparation of invoices**

The service provider is required under civil law to issue a correct invoice. If he fails to meet this requirement, the beneficiary can enforce his claim to issue an invoice before the district or regional court.

In some cases, the service provider is required to issue an invoice under VAT laws. This VAT obligation cannot be enforced by the beneficiary, as it only concerns the relationship between the service provider and the tax authorities.

# **III. Mandatory invoice information**

## **1. Address and name of the service provider**

The service provider (invoicing party) must state his full name and full address in the invoice. This information must allow the service provider to be identified uniquely and easily verified. Abbreviations, letters, number or symbols are also permitted, if their significance is clearly defined in the invoice or in other documents.

If the service provider is a GmbH in the course of incorporation, the invoice must clearly indicate that the GmbH is still in the course of incorporation, e.g. by adding "in inc.". Otherwise the invoice is classed as incorrect.

The deduction of input tax will be refused if the services were provided by a dummy company, which only has a so-called "mailbox registered office". In such cases, such an address is incorrect.

**Note:** The beneficiary bears the burden of proof for establishing that the mailing address and address of the invoicing party are in existence when performing the service and invoicing. It is therefore his duty to ensure the accuracy of the information contained in the invoice.

## **2. Name and address of the beneficiary**

The invoice must also contain the full name and address of the beneficiary and recipient. The address may be replaced with a post office box or a key account address, if these exist.

Corporations and partnerships in particular should ensure that they - and not their partners - are indicated in the invoice as the beneficiary. The legal form of the company must also be detailed, if mentioning another legal form could result in confusion.

**Example:** Müller & Schmidt OHG receives a supply. However, the invoice is made out to Mr Müller. The invoice is therefore incorrect, as the beneficiary was Müller & Schmidt OHG.

**Example:** In addition to Müller & Schmidt OHG, both partners also hold interests in Müller & Schmidt GmbH. An invoice was issued to Müller & Schmidt GmbH, for a supply to Müller & Schmidt OHG. The invoice is incorrect as it states the wrong legal form and can result in confusion between the two companies.

Problems can arise if the invoice states the relevant name of the beneficiary, but is addressed to a third party with the addition "c/o". The address of the third party is then only classed as the company address of the beneficiary, if he operates a branch, operating site or part of the business under the "c/o" address.

## **3. Tax number or VAT ID number**

The invoice must state either the tax number or the VAT ID number of the service provider.

If the invoicing party performs the service in his own name and negotiates a sale in a different name and for a different account, e.g. as a petrol station operator or as a travel agency, both tax numbers or VAT ID numbers must be stated, those of the invoicing party and the mineral oil or travel company.

#### **4. Invoice date**

The invoice must show an invoice date (date of issue).

#### **5. Consecutive invoice numbering**

This requirement for a consecutive invoice number should ensure that the invoice is unique.

The manner in which the invoice number is prepared is insignificant: For example, a combination of letters and numbers is permitted.

The invoicing party can also create several so-called number ranges for areas that are differentiated by time, geographical location or organisation, e.g. by forming a supplement to the invoice number for certain customer groups, countries or periods.

**Example:** The company starts each quarter with the invoice number 1, but adds I, II, III or IV and the year depending on the quarter.

The invoice number must be consecutive, but not without gap. This also applies when using number ranges that can also contain gaps.

#### **6. Description of service provided**

In the case of a supply of goods, the invoice must include the standard trade description for the goods supplied, i.e. the quantity and type. In the event of any other service, the scope and type of service must be described.

The description must be accurate so that the supply or other service provided can be uniquely identified and easily verified. Standard collective trade descriptions such as "office furniture", "spirits", "cut flowers" or "dry goods" are sufficient.

The following are not accepted:

- for other services: General service descriptions, e.g. "for technical advice and testing", "tiling work", "dry construction work" or "external rendering work";
- for deliveries of goods: Descriptions that cover groups of different objects, e.g. "our entire inventory" or "gifts".

In these cases, it is sufficient if the service provided is included in other information in the invoice or by a reference in the invoice to other company documents, e.g. a framework agree-

ment. However, if there is no reference to these company documents in the invoice, the company documents cannot be used to explain the service provided.

**Note:** When delivering mobile telephones, it is not necessary for the device identification number of the individual telephones to be stated on the invoice. However, mobile telephones are often part of a supply chain established on VAT fraud (so-called VAT carousel). To prevent the tax authorities from establishing this type of VAT carousel, the emphasis should be attached to the description of the device identification numbers in the invoice: The tax authorities cannot then assume, without further action, that the owner was involved in the VAT carousel and thus refuse the deduction of input tax.

## **7. Time of supply**

In addition to the invoice date (see section III. 4.), the invoice must also state the time of the supply or other service. This applies even if the supply date is identical to the invoice date, e.g. for cash payments. However, the note "Supply date equal to invoice date" is sufficient. In principle, it is sufficient to state the month in which the service was performed.

The performance date is determined according to the following principles:

- If the beneficiary collects the goods from the service provider, the time of transfer, i.e. collection, is the time that is applied.
- If the goods are dispatched or transported by the supplier, buyer or third party, i.e. a forwarding agent, the start of dispatch or transport is the time that is applied.
- In the event of any other service, the time at which the other service is completed is the time that is applied. If the other service extends over several months or years, the full service period can be stated, e.g. "01.01.2010 to 31.12.2010".

A delivery note cannot be used in place of the time of supply in the invoice. However, the invoice can include an express reference to the delivery note, if this clearly shows the time of supply. The date of issue of the delivery note is not sufficient.

## **8. Fee**

The invoice must state the fee, i.e. the net amount. If individual services are subject to different tax rates or are tax-exempt, the fee must be broken down accordingly.

If discounts have been agreed, it is sufficient to state "2% discount if paid by ...." for example. It is there not necessary to state the discount with its amount.

If discounts or bonuses have been agreed in writing, it is sufficient to make reference to the discount or bonus agreement in the invoice, e.g.: "Subject to the bonus agreement dated .....".

The owner must be able to present this agreement immediately on request.

## **9. Tax rate and tax amount**

The invoice must clearly state the tax rate (e.g. 19%) and the tax amount, i.e. the current VAT rate.

Example:

Fee	1,000 €
plus VAT 19%	190 €
Total	1,190 €.

If the service is tax-exempt, reference must be made to this exemption although the specific legal standard does not have to be expressly indicated, but can be described in less formal language, e.g. "Tax-exempt due to patient transport". Simplifications are permitted for so-called low value invoices with a total not in excess of €150 (see section IV. 1).

If services are listed on an electronically created invoice with different tax rates, the VAT amount must be expressed as a total, if the respective tax rate is stated for the individual services. This also applies if VAT-exempt sales are stated alongside VAT-liable services.

**Note:** Particularities apply to hotel owners that offer discounted accommodation services alongside non-discounted other services (e.g. spa or meals): You can summarise certain non-discounted services under a compound item such as "business package" or "flat service fee", which can be applied with 20% of the lump sum price and then taxed at 19%; details of these can be found in the client information sheet "Overnight stays in hotels and on campsites".

## **IV. Particularities**

### **1. Low values invoices**

Simplifications are permitted for so-called low value invoices with a total not in excess of € 150. The following information is sufficient:

- the full name and full address of the service provider (see section III. 1.),
- the date of issue (see section III. 4.),
- the name of the service provided (see section III. 6.),
- the fee and the VAT amount in total and
- the tax rate or if exempt a reference to tax exemption, e.g. "Tax-exempt on the basis of the Small Business Regulation in accordance with § 19 of the VAT Act" (see section III. 9.).

However, these simplifications do not apply to mail-order supplies within the EU Community area, intra-Community supplies and if the beneficiary is liable for tax.

### **2. Tickets**

Simplifications also apply to tickets. These are classed as correct invoices, which are entitled to a deduction of input tax, if they contain the following information:

- the full name and the full address of the forwarding company (see section III. 1), a general standard abbreviation is sufficient here by way of a method of identification (e.g. DB for Deutsche Bahn, BVG in Berlin or MVV in Munich),
- the date of issue (see section III. 4.),
- the fee and the VAT amount in total and
- the tax rate, if the forwarding service is not taxed at a discounted rate; a discounted rate of tax of 7% applies only to transport within a municipality or if the distance travelled is up to 50 km. In the case of tram tickets, the chargeable distance can be stated instead of the tax rate.

Particularities apply in the case of cross-border transports. We will be happy to advise if necessary.

### **3. Credit notes**

The contracting parties may agree that the service can be settled by a credit note from the beneficiary. A credit note is not a correction in the sense of a reverse invoice for an incorrect supply, but is an invoice from the beneficiary.

---

The credit note is only then valid, if it is sent to the service provider and the service provider does not dispute the credit note.

The credit note must contain the same mandatory information as an invoice from the service provider. It is therefore important to state the tax number or VAT identification number of the service provider (credit note recipient; see section III. 3.), not that of the party issuing the credit note (beneficiary). The service provider must therefore inform the issuer of the credit note of his tax number or VAT identification number. However, the invoice number (see section III. 5.) is assigned by the issuer of the credit note.

#### **4. Agreements on continuous performance as invoices**

Contracts may also be recognised as invoices, if they contain the mandatory information required. This is conceivable in the case of a maintenance agreement or rental contract, for example. The invoice must then also state the tax number or the VAT ID number of the service provider. Instead of a consecutive invoice number, it is sufficient to state an agreement number or, if a rental contract, a flat or tenant number. If any information is missing, this must be included in other documents to which a reference is included in the contract.

**Note:** Contracts on the basis of which services are provided on a monthly basis (e.g. rental or maintenance contracts), generally include the monthly fee and the VAT rate, but do not show the respective service period (e.g. October 2010). In these cases, the contract is only classed as an invoice if the monthly payment documents or remittance slips can be presented.

#### **5. Payments on account**

If an invoice is created for a payment on account prior to performing the service, it must also contain the mandatory information. However, the time of the (future) supply is not required. Instead, the time of receipt of the fee must be stated, if this time is fixed and does not match the issue date of the invoice. Here it is sufficient to state the calendar month of receipt. Furthermore, the invoice must state that the service has not yet been provided.

#### **6. Integrated companies**

In the case of an integrated company, the dominant enterprise and subsidiary companies are treated as a (joint) company for VAT purposes. Invoices within the integrated company are therefore not required for VAT purposes. If an invoice is created with separate VAT, this does not allow the deduction of input tax.

**Note:** According to the Internal Revenue Service, the invoice issuer is not required to remit the VAT reported separately to the tax authorities. A procedure is already pending with the Federal Fiscal Court, as the Fiscal Court of Munich has supported an obligation to deduct the VAT reported against the tax authorities.

## **7. Reverse charge (tax liability of the beneficiary)**

In certain cases, the beneficiary is liable for VAT, rather than the service provider. This includes work supplies and other services by an owner resident abroad and construction works. It is currently planned that the tax liability of the beneficiary on supplies of scrap metal and on services of building and window cleaners will be extended from 2011.

The service provider must issue an invoice, although the service provider is not liable for VAT, and must state in the invoice that the beneficiary is liable for tax. The beneficiary must then remit the VAT to the tax authorities, but can at the same time claim input tax in the same amount.

**Please note:** Input tax can only be deducted if the service provider does not state in its invoice that the beneficiary is liable for VAT.

## **V. Incorrect invoices and adjustments**

### **1. Consequences of incorrect invoices**

If the mandatory information is missing or is incorrect, the deduction of input tax must in principle be refused (see also section V. 2.). According to the Federal Fiscal Court, it is irrelevant whether or not the recipient of the invoice was bona fide and able to identify the errors. However, the tax authorities allows the deduction of input tax, if an incorrect tax number or VAT identification number was stated in the invoice and the beneficiary was unable to identify this.

**Please note:** If the deduction of input tax is refused due to incorrect invoice information, an equitable measure by the tax authorities can be taken into account, if the invoice recipient was unable to identify the irregularity of the information in the invoice.

A particularity occurs if the beneficiary is invoiced at a higher VAT rate, namely 19% instead of the correct rate of 7%. In this case, the beneficiary can claim the VAT rate of 7% on the net amount reported in the invoice as input tax.

**Example:** U invoices E for fruit and vegetables €1,000 + 19% VAT = €190, together €1,190. However, the correct VAT rate would be 7% giving a VAT amount of €70. E can now deduct input tax of €70, as this is the statutory VAT owed on the net amount of €1,000 reported.

Input tax cannot be deducted, if the owner unjustly invoices VAT for a VAT-exempt or for a non-VAT liable service.

## **2. Adjustments**

An invoice that omits mandatory information or uses incorrect mandatory information can be adjusted. This adjustment can be made either by issuing a new invoice or by adding or correcting only the missing or incorrect information. The adjustment must be made using a specific and unique reference to the incorrect invoice. According to the tax authorities, the adjustment must include the consecutive number of the adjusted invoice. According to the ECJ, however, this is not required.

**Tip:** The invoice should be verified immediately on receipt to ensure that it contains all of the required information and is correct. If the invoice is incorrect, the recipient should request an immediate adjustment before paying the invoice. The later the invoice adjustment is tackled, the more difficult it may be to carry out, e.g. because the service provider has relocated its business premises and can no longer be located or has gone bankrupt.

The adjustment must in principle be applied by the invoice issuer, not by the beneficiary and invoice recipient. In the case of credit notes (see section IV. 3.), the adjustment is carried out by the issuer of the credit note, in other words by the beneficiary.

According to law and the opinion of the German tax authorities, this adjustment is not retrospective to the original invoice date and only allows input tax to be deducted in the year of the adjustment. In this case, there is a possibility of interest being charged, if the tax authorities subsequently refuse the deduction of input tax as part of an external audit and only then trigger an adjustment of the invoice. In a ruling in 2010, the European Court of Justice (ECJ) considered that a retroactive adjustment was indeed admissible. The financial authorities have not yet responded to this.

## VI. Safekeeping of invoices

The owner must retain any invoices received for a period of ten years. The retention period starts on 31 December of the calendar year in which the invoice is issued. This period can be extended, if the assessment period has not yet expired, e.g. due to an ongoing action.

The invoices must be legible for the entire period. Subsequent amendments or additions are not allowed.

**Notes:** If the invoice is transmitted by fax and printed on thermo-paper, there is a risk that the type will fade before the end of the retention period. The fax should therefore be copied and the copy retained. The invoice printed on thermo-paper must not be destroyed.

The invoices can also be saved electronically. Special requirements may then apply with regards to legibility and examinations by the tax authorities.

If the invoice is lost during the retention period or destroyed in a fire, the deduction of input tax is not necessarily discontinued retroactively. The owner must then prove that the invoice was originally submitted. This proof can take any form, e.g. a duplicate of the invoice.

Yours faithfully,

The MAW Team