



KMLZ VAT NEWSLETTER

VAT treatment of discounts has been changed

1. ECJ case *Ibero Tours* and follow-up decisions

In its judgement of 16 January 2014, the ECJ decided that discounts, which are granted by travel agents to travel clients, shall not result in a price reduction either with regard to the relationship between tour operator and travel agent nor that between travel agent and travel client. The German Federal Fiscal Court followed the ECJ decision *Ibero Tours* in its judgements of 27 February 2014 and 3 July 2014. As a consequence, the court has altered its precedential case law with regard to discounts from intermediaries, accordingly.

2. Circular from German Federal Ministry of Finance dated 27 February 2015

The German Ministry of Finance confirmed, in its circular dated 27 February 2015, the jurisdiction of the ECJ and the German Federal Fiscal Court.

2.1 Output VAT cannot be reduced

A reduction of the taxable base is not given in the case where a taxable person, acting as intermediary, grants discounts to customers of the services procured by him.

Discounts granted by intermediaries

Based on new case law, an intermediary is no longer entitled to reduce his output VAT if he refunds to the customer of the transaction procured by him part of the transaction price. The German Ministry of Finance issued a circular confirming this opinion on 27 February 2015. This circular will have a great impact on many agents e.g. of telephone contracts, car dealers, purchasing associations and travel agents. The concerned companies will have little time to amend their structures and their invoicing procedure.

This opinion will have great impact on the following taxable persons:

- **Agents:** Cash discounts, which are granted by an agent of e.g. telephone contracts to customers thereof will not reduce the taxable base of the procurement services provided by him to the mobile phone companies.
- **Car dealers:** Price reductions granted by a car dealer to a customer will not reduce the taxable base of the procurement services provided by the car dealer to the car manufacturer.
- **Purchasing associations:** Price reductions granted by a purchasing association to its members will not reduce the taxable base for the services provided by the purchasing association to the suppliers of its members.
- **Travel agents:** Discounts granted by a travel agent to a travel client for a procured journey do not reduce the taxable base for the procurement services provided by the travel agent to the tour operator.

2.2 No obligation to reduce input VAT

The German Ministry of Finance has explicitly stated that the customers of the procured services are not obliged to



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reduce their input VAT due to the discounts granted by the intermediaries. With regard to discounts granted by purchasing associations, their members are not obliged to reduce their input VAT deduction accordingly.

2.3 Treatment of the “exceptional case”

The statement of the German Federal Ministry of Finance regarding an “exceptional case” is somewhat confusing. An “exceptional case” shall be given, when the discounts granted by the intermediary do not refer to the services procured by him, but rather, are based on the relationship with the customer. If such an “exceptional case” is given, the discounts granted by a purchasing association shall be regarded either as consideration for services provided by the members to the purchasing association or as a reduction of the taxable base for services provided by the association to its members. It is unclear when such an “exceptional case” will apply. The application thereof shall be very limited due to the fact that the Federal Fiscal Court has clearly stated, in a previous judgement, that the members of a purchasing association do not provide services to the said association.

2.4 Non objection rule

The German Ministry of Finance grants a non-objection rule. This means that, until the above mentioned judgements of the German Federal Fiscal Court of 27 February 2014 (V R18/11) and 3 July 2014 (V R3/12) are published in the Federal Tax Gazette, it will not be objected to, if intermediaries and purchasing associations have reduced their output VAT based on discounts granted to their customers. Furthermore, the German Ministry of Finance has clarified that, with regard to the calculation of the reduction of the output VAT, the VAT rate is applicable with regard to the procured turnover. This means that the purchasing association cannot

apply the standard VAT rate, with regard to the reduction of the output VAT, if the goods purchased by its members are subject to the reduced VAT rate. From the date the judgements are published in the Federal Tax Gazette, intermediaries and purchasing associations will not be permitted to reduce their taxable base with regard to discounts granted to their customers/members.

3. Remarks for the practice

The concerned companies will have very little time to amend their invoicing procedures and the agreements with their customers/members and, if necessary, with the suppliers of the procured services or goods.

It is recommendable, that intermediaries and purchasing associations immediately review their agreements with their customers, respectively members. In the event of an “exceptional case”, intermediaries and purchasing associations would face interest risks. For the future, intermediaries/purchasing associations have to ensure that they do not reduce their output VAT when granting discounts to customers/members. Furthermore, only the net-amount of a discount should be paid-out. Whether the given intermediary and discount structure is still realizable, must also be reviewed. It may require some reconsideration in order to arrive at the same economic effect.

Finally, it should be noted that protection for reliance on existing case law according to sec. 176 of the German Fiscal Code, is not applicable with regard to preliminary (monthly) VAT returns. It is therefore, recommendable that intermediaries and purchasing associations file the annual VAT return 2014 prior to the aforementioned judgements being published in the Federal Tax Gazette.