



## VAT liability for unduly charged VAT also possible when negative VAT amounts are shown

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### 1 Background

Sometimes invoices contain negative invoice amounts and a corresponding negative VAT amount is shown in the invoice (e.g. with a minus sign). These can be invoices that only show a negative amount. However, they can also be invoices that contain both positive and negative partial amounts: The positive amount shows the supplier's payment claim against the recipient. The negative amount indicates an opposing payment claim, the recipient's claim against the supplier. The reason for this can be that the supplier grants the recipient a discount, e.g. a refund, a bonus, etc. However, it may also be the case that the parties assume that the recipient (e.g. the purchaser of goods) has provided a supply of services (e.g. a supply of advertising services to the vendor of the goods). Here, the question arises as to whether a negative VAT amount with a minus sign can also give rise to a VAT liability for unduly charged VAT under sec. 14c of the German VAT Act (Art. 203 of the EU VAT Directive). The German Federal Ministry of Finance (BMF) has now commented on this in its letter of 18 April 2023. The reason for the publication of the current BMF letter is a decision made by the German Federal Fiscal Court (BFH) of 26 June 2019.

### 2 German Federal Fiscal Court (BFH), judgement of. 26 June 2019

In the case decided by the BFH (XI R 5/18), the supplier had issued invoice documents designated as "debits". In these, he invoiced "WKZ according to agreement Bonus AC Month...". The amounts, including the VAT amounts shown, each followed the €- currency sign and were marked with a minus (sign). The supplier paid this VAT amount to the tax office and the recipient deducted the input VAT. In fact, only about half of the amounts constituted consideration in return for a supply subject to VAT. The supplier's tax office was of the opinion that the remaining amounts were a reduction in payment. In this



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way, the tax office attempted to repel a claim by the supplier's insolvency administrator, who was seeking a refund from a correction in accordance with sec. 14c of the German VAT Act in favour of the insolvency estate. In the BFH's view, however, the negative amounts shown did not constitute grounds for a VAT liability under sec. 14c of the German VAT Act.

### 3 BMF's letter of 18 April 2023

The BMF has now amended the German VAT Circular and is instructing the tax offices how to deal with this judgment:

- If a minus sign in an invoice is intended to express that the issuer of the invoice is invoicing a reduction in payment, the supplier does not owe the negative amount in accordance with sec. 14c of the German VAT Act.
- However, insofar as the supplier (unjustifiably) invoices for a (supposedly) rendered supply of services and the outstanding amount contains a minus sign, sec. 14c of the German VAT Act should be applicable. The BMF assumes that the principles of the BFH's decision are not applicable in this case, as no "negative amount" is shown to this effect. The minus sign merely expresses a payment obligation. In this context, the tax authorities may also only include other documents in the legal examination if the invoice document explicitly refers to them.
- The BFH's decision is also not applicable to self-billing invoices, if these are also (unjustified) invoices for a supposedly rendered supply of services. In this case, a VAT liability under sec. 14c of the German VAT Act may arise for the recipient of the self-billing invoice, i.e. the alleged supplier.
- The letter is to be applied to all open cases.

### 4 Opinion and practical tips

Insofar as the BMF rejects a VAT liability for unduly charged VAT under sec. 14c of the German VAT Act in the case of an invoice for a reduction in payment (e.g. refunds, discounts, etc.) with a negative VAT amount, it is in line with the BFH's view.

Insofar as it assumes a VAT liability under sec. 14c of the German VAT Act in the case of invoicing for an alleged supply of services with a negative VAT amount, this view is, in any case, not confirmed by the BFH. Rather, the arguments used by the BFH against the application of sec. 14c of the German VAT Act to a negative amount tend to support the view that a negative VAT amount does not trigger a VAT liability under sec. 14c of the German VAT Act even beyond the reduction in payment: a negative amount is not an "additional amount" within the meaning of sec. 14c of the German VAT Act and not "VAT" within the meaning of Art. 203 of the VAT Directive. It would also contradict the meaning and purpose of sec. 14c of the German VAT Act if a negative VAT amount were to trigger a negative VAT liability under sec. 14c of the German VAT Act, i.e. a refund claim in favour of the supplier. The BFH expressly left open the question as to whether something different might apply in the case of self-billing invoices. The BMF's view is also not in line with the jurisprudence on another point: namely that other documents are only to be used for the interpretation of the invoice's content if the invoice document explicitly refers to them. Although the BFH states that references in the invoice documents must be taken into account, it also says that, in light of the ECJ decision *Barlis 06 (C-516/14)*, all documents available to the tax office must be taken into account. In this respect, even documents to which the invoice document does not refer must be deemed significant.

The BMF's letter complicates the application of the law. Both suppliers and recipients should therefore exercise caution, even when negative amounts are shown, and thoroughly check invoices and self-billing invoices. Insolvency administrators may be pleased if, on the basis of the BMF's letter, they can trigger a refund claim for the benefit of the insolvency estate from a corresponding sec. 14c correction, even in the case of negative amounts.