



# KMLZ VAT NEWSLETTER

## Federal Ministry of Finance tightens tax liability in accordance with sec 14c para 1 of the VAT Act

### 1. Problem

If a taxable person indicates a VAT amount in his invoice which is too high, he will be liable for the payment of the additional VAT amount in accordance with sec 14c para 1 sentence 1 of the German VAT Act. According to sec 14c para 1 sentence 2 of the German VAT Act, the taxable person may correct the VAT amount. To date, it has been sufficient, in the opinion of the fiscal authorities, that the taxable person corrects the invoice (sec 14c.1 para 7 of the Administrative Circular). So far, the Federal Ministry of Finance has not demanded that the supplier repays the amount of the overcharged VAT to the recipient.

### 2. Statements of the Federal Ministry of Finance

By means of its letter of 7 October 2015, (Ref: III C 2 – S 7282/13/10001), the Federal Ministry of Finance has now established the requirement that the supplier must also

### Correction in accordance with sec 14c para 1 of the VAT Act only if VAT amount is repaid

If a taxable person's invoice shows an amount of VAT that is too high, he is liable for the payment of the inflated amount in accordance with sec 14c para 1 sentence 1 of the German VAT Act. If the taxable person wants to eliminate the tax liability, according to sec 14c para 1 sentence 2 of the German VAT Act, he must correct the invoice. The Federal Ministry of Finance has now tightened the requirements for eliminating such VAT liability: It now additionally requires the supplier to repay the already collected additional VAT amount to the recipient.

repay the overcharged VAT amount to the customer. The Federal Ministry of Finance has derived this criterion from the Federal Fiscal Court's case law in accordance with sec 17 para 1 sentence 1 of the German VAT Act (judgment of 18 September 2008 – V R 56/06). Just like an amendment of the tax base in accordance with sec 17 para 1 sentence 1 of the German VAT Act, it only applies if the amount is actually paid back. Similarly, according to the view of the Federal Ministry of Finance sec 14c para 1 sentence 2 of the German VAT Act also requires a repayment, given that it refers to sec 17 para 1.

This additional criterion also affects the point in time when the correction, in accordance with sec 14c para 1 sentence 2 of the German VAT Act, become effective. This is the taxable period in which both requirements are met: On the one hand, the correction of the invoice and, on the other hand, the repayment of the overcharged VAT amount.



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As regards the recovery obligation, the following aspects should be observed:

- **Supplier has to have already received the overcharged VAT amount**

This additional criterion only applies if the supplier has already received the additional VAT amount. If the customer has merely paid the remuneration and the legally owed VAT amount to the supplier, a repayment of the overcharged VAT may not be decisive.

- **Repayment only required if the total invoice amount is reduced**

In addition, this repayment criterion will only apply if the total invoice amount is reduced as a result of the corrected invoice. However, if the total invoice amount remains unchanged (e.g. tax exempt supply, the supplier invoices EUR 1,000 plus EUR 190; the corrected invoice then shows a tax exempt remuneration in the amount of EUR 1,190) the repayment is irrelevant. This applies in cases where a gross agreement has been made, that is, when the supplier and the recipient have agreed a total amount including VAT. In these cases, the customer always has to pay the same amount irrespective of the correct VAT treatment.

- **Repayment not necessary in the case of sec 14c para 2 of the German VAT Act**

In cases concerning sec 14c para 2 of the German VAT Act, that is, if VAT is invoiced despite the person issuing the invoice not being legally permitted to show VAT on an invoice, or if there has not been any supply of goods or services, the legal situation, according to the Federal Ministry of Finance, remains as it was. A repayment by the invoice issuer to the recipient of the invoice is not required. Here,

instead of the repayment, it is important that the recipient has not deducted or corrected input VAT.

### 3. Application period

The Federal Ministry of Finance is planning to apply these new principles to all open matters. The Federal Ministry of Finance's letter does not contain an interim regulation.

### 4. Conclusion

By means of its letter, the Federal Ministry of Finance makes the correction, in accordance with sec 14c para 1 sentence 2 of the German VAT Act, more difficult. If the taxable person has already paid the invoiced and overcharged VAT amount to the tax office, this amount will only be refunded to him if he has already repaid the amount to the customer. The supplier is therefore obliged to bear the cost in advance.

The supplier is therefore worse off in cases concerning sec 14c para 1 of the German VAT Act than the invoice issuer in cases concerning sec 14c para 2 of the German VAT Act, although the wording of sec 14c para 2 of the German VAT Act provides for stricter correction requirements. In such cases, the tax authorities need to agree to the correction.

It is for the courts to clarify whether the additional requirement, which has now been established by the Federal Ministry of Finance, can be brought into line with statute law. The Federal Finance Court's decision, as regards the pending revision procedure XI R 43/14, may already go some way in providing a degree of clarity. In particular, taxable persons who cannot afford the repayment to the customer should consider appealing their cases before the tax courts.