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Editorial

VAT legislation is characterized by the principle of neutrality. A business that must account for VAT on its outbound business transactions is equally entitled to recover the input tax payable on its inbound services and transactions. In addition to the business institutions traditionally found in a free market economy, public sector operations can also have an entrepreneurial quality. To what extent a public sector institution qualifies as a business is a matter riddled with complex issues. Even where a state authority is engaging in activities under public law, it can be regarded as a business under European Union law, especially if "treatment as a non-taxable entity" is likely to give rise to significant distortions in competition. It is for this reason that in their coalition agreement, Germany's governing political parties, the conservatives (CDU/CSU) and liberals (FDP), are striving to achieve a level playing field for local public and private providers, especially in the area of VAT.

Germany's current VAT laws fail to take the public sector adequately into account, and the provisions governing the VAT treatment of institutions governed by public law are incompatible with European Union legislation. Instead, German VAT legislation borrows e.g. from elements of corporate tax law. Drawing reference to corporate tax law practice, the German tax authorities have, up to now, rated portfolio management as a "non-business" activity for tax purposes, but the German Federal Tax Court (BFH) has raised an objection to this preferential treatment, citing European Union law and a ruling of the Court of Justice of the European Union (CJEU)*, cf. BFH, ruling of 15 April 2010 (V R 10/09). The German tax authorities have yet to respond.

EU law itself has come under scrutiny too. In April, in the course of the debate on the "Green Paper on the Future of VAT", the Commission published a study by Copenhagen Economics and KPMG on the reform of the VAT treatment of the public sector (please see article in VAT Newsletter). Following a detailed analysis of the current situation, the study examines options for optimizing the fiscal treatment of the public sector and charitable institutions. This has given the European debate on public sector taxation new impetus and will hopefully breathe new life into the debate in Germany too, as well as raise the profile of a whole range of VAT issues in connection with the public sector.

Yours
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*official name and abbreviation according to the Lisbon Treaty; in order to allow a better recognition the "ECJ" abbreviation remains to be used in our VAT Newsletters

Content

NEWS FROM THE BFH:

No input tax deduction on transaction costs in connection with the non-taxable sale of holdings

BFH, ruling of 27 January 2010 (V R 38/09)

The BFH ruling concerns the question of the deductibility of input tax pursuant to § 15 German VAT Law (UStG) on the supply of consultancy services when a holding in a company is sold. In doing so, the BFH has stated its position in particular on how the ECJ ruling of 29 October 2009, case C-29/08, AB SKF (see December 2009 VAT Newsletter) should be interpreted.

The case

Put simply, the case ruled on by the BFH concerned a holding sold by company A Ltd. to company C Ltd., with the former making use of certain consultancy services (investment bank, attorney). Company A Ltd. held a stake of 99% in company B Ltd. in whose management company A Ltd. intervened in the form of services supplied for a consideration. Although consolidated tax-group status did exist between company A Ltd. and company B Ltd., the purchaser, company C Ltd., did not intend to preserve this fiscal relationship with company B Ltd. after the acquisition.

Ruling

First, the BFH confirmed that the very act of supplying a management service to the holding company for a consideration meant that the disposal of the holding itself essentially constituted a taxable transaction. While it is true that the mere acquisition, holding and disposal of shares in a company do not constitute economic activities per se, according to the ECJ ruling, however, it is a different matter if, for example, a company directly intervenes in the management of the holding company and charges the latter for the privilege. By way of exception, however, the sale is considered non-taxable if the disposal of the holding constitutes a transfer of business as established by § 1 (1a) UStG. According to the BFH, the sale of the shares can be assessed as a transfer of business only if either the stake being sold amounts to 100% of the shares, or consolidated tax-group status existed between the selling company and the holding company, and the buying company intends to preserve this fiscal relationship post-acquisition.

As neither option was applicable in the case under dispute, the BFH presumed the sale transaction to be taxable, but assessed it as a VAT exempt transaction with securities pursuant to § 4 no. 8 e) UStG. The BFH rejected input tax deduction on the supply of consultancy services on the occasion of the sale of the holding. In its opinion, a direct and immediate link has to be drawn between the input services (i.e. the consulting) and the tax-free disposal of shares, thus precluding deduction of input VAT by § 15 (2) no. 1 UStG, as the input services were, in actual fact, cost components of the share disposal. Since there was a direct and immediate connection between the input services and the output transactions the BFH stated that it was not required to establish to which specific cost components of the output transactions the input services were to be allocated – a principle reffered to by the ECJ with regard to the AB SKF case. Even if the input services were indirectly serving to reinforce the company's overall economic activity, which would entitle it to input VAT deduction, this was – according to the BFH – irrelevant because it was merely indirect in nature.

Please note:
If, in its ruling on the AB SKF case, the ECJ expressly affirms the option of allocating input services to the company's overall economic activity, which is being bolstered by the capital resulting from the participation, the BFH will interpret this as restrictive and cite the ECJ ruling. Any allocation of this sort would be possible only in the absence of a direct and immediate link between the input transaction and one or more output transactions. In the case of transaction costs, however, this is almost always to be precluded.

Input tax deduction and supplies made free of charge

BFH, ruling of 9 December 2010 (V R 17/10); BFH, ruling of 13 January 2011 (V R 12/08); BFH, ruling of 12 January 2011 (XI R 9/08); ruling of 12 January 2011 (XI R 10/08)

In all four rulings, the dispute centered on the extent of a company's right to allocate goods and services to the business and to deduct input tax, as well as on the tax levied on the supply of goods and services provided free of charge.

The case

Ruling V R 12/08 concerned the deductibility of VAT on the supply of an input service that was to be used by the recipient from the outset exclusively and directly for the purpose of a disposal made free of consideration within the meaning of § 3 (1b) no. 3 UStG. The matter involved an entrepreneur who constructed site development facilities and then transferred these facilities together with the associated plots of land to a municipality free of charge.

Ruling V R 17/10 concerned the deductibility of input tax on expenses incurred by an employer for a company outing arranged for his employees.

Rulings XI R 9/08 and XI R 10/08, the subject matter of which was the same, concerned the right of a limited liability company to deduct input tax on a building it uses for business purposes and also lets to managing partners free of charge for private residential purposes.

Ruling

All four BFH rulings concern the extent of a company's right to allocate goods and services to the business and the right to deduct input tax. The crux of the matter is how supplies made other than for a consideration should be taxed. Citing a lack of compatibility of the provisions on input tax deductibility between § 15 (1), (2) and (4) UStG on the one hand, and Art. 168 of the VAT Directive on the other, but interpreting the matter in accordance with the Directive, the BFH held that essentially, input tax was deductible only if the claiming company was using or was intending to use the input service for an activity rendered for a consideration. The BFH interprets the key element of § 15 (1) no. 1 UStG, namely "supply relating to business activities", in line with European Union legislation as a supply for the purpose of an economic activity. As far as the BFH is concerned, an economic or business activity can only be a supply made for a consideration. It follows, therefore, that if and insofar as the input service (e.g. construction of site development facilities, purchase of a company excursion, erection of a building) is connected directly and immediately only with a supply rendered free of charge, a supply on the part of the company no longer exists in principle. The BFH thus rejected the right of the companies in question to allocate goods and services to the business, to deduct input tax and, by consequence, to have the services rendered free of charge taxed as a service rendered without a consideration within the meaning of § 3 (1b) UStG or § 3 (9a) UStG.

With its four rulings, the BFH implemented the ECJ decision concerning the VNLTO case (ECJ, ruling of 12 February 2009 – case C-515/07). The following distinctions need to be made:

(1) If the input service (acquisition) is to be used exclusively and immediately for an actual or intended disposal made free of a consideration, this will preclude both the deduction of input tax and any VAT liability on the goods disposed of free of charge.

(2) If the input service is to be used exclusively and immediately for output transactions that are to be charged for (i.e. are essentially taxable), input tax is fully deductible. A taxable supply/service rendered without a consideration is also not applicable.

(3) If the actual or intended use of the input service is mixed, i.e. it is to be used in part for transactions rendered free of a consideration and partly for activities which will be charged for, the following distinctions apply:

    (a) If the non-economic activity amounts to purely private usage, e.g. where an individual entrepreneur is using an office building for private residential purposes, the company's right to allocate the costs to the business remains in full. If the entrepreneur, by availing himself of this right, elects to allocate the object fully to company assets, input tax remains fully deductible and the unjustified deduction of the input tax for the private usage of the building is offset by the tax payable on the supply made other than for a consideration.

    (b) By contrast, if the non-economic usage involves a transaction that is neither charged for nor is private in nature, input tax is deductible only in proportion to the usage for the transaction rendered for a consideration, even in the case of a mixed use situation. This refers above all to input services used for charitable (i.e. non-profit) activities performed by associations, public-service operations conducted by a legal entity under public law, and the mere act of holding shares in companies.

Based on these findings, the BFH rejected the deduction of input tax in ruling V R 12/08. If an entrepreneur procures services exclusively for the purpose of constructing site development facilities and, while buying these services, already fully intends to transfer these facilities with or without the associated plots of land to a municipality free of charge, he may not deduct input tax. The entrepreneur may not deduct the input tax on services procured exclusively for disposal purposes within the meaning of § 3 (1b) no. 3 UStG, this irrespective of whether the entrepreneur's intention in transferring the facilities to the municipality free of charge was to enable him to sell plots of land within the site development areas on a taxable basis. The same applies to the intended usage or disposal within the meaning of § 3 (9a) no. 2 UStG of an input service such as a procured company excursion.

The subject matter of V R 17/10 did not constitute a "transaction similar to an exchange" within the meaning of § 3 (12) sent. 2 UStG as the supply took place without reference to any performance goals demanded of the company employees. Even if the purpose of the excursion is to promote a better working atmosphere within the company, it is the BFH's opinion that, in general, an in-kind gratuity serves exclusively and directly to satisfy the personal needs and requirements of the personnel. By way of exception, a disposal is deemed not to have taken place if special circumstances or "special considerations" with regard to the company's economic activity exist. With regard to "special considerations" within the meaning of § 3 (9a) no. 2 UStG, it should be noted that national legislation departs from Union law to the extent that it favors the entrepreneur, who would otherwise have had to pay tax on a disposal. The BFH ruling left open the issue of whether – in accordance with Section 1.8 (4) no. 6 VAT Application Decree (UStAE) – the company's business interest would prevail over "the personal needs and requirements of the personnel" provided that the tax allowance threshold defined in the above clause were not exceeded (EUR 110 gross, per employee and event). For if this threshold is complied with, a "special consideration" will most certainly exist, thus ruling out any question of a disposal. The entrepreneur is not entitled to ask for the threshold to be raised.

With regard to rulings XI R 09/08 and XI R 10/08, the BFH referred the matter back to the fiscal court. The BFH did not have sufficient facts with regard to the intended use of the building by the managing partner.

Please note:
Full implementation of the ECJ ruling in matters concerning the VNLTO case raises numerous issues. Thus, it is questionable whether procured movable objects that are initially used outside a company but later appropriated internally can give rise to an adjustment of input tax deductibility within the meaning of § 15a UStG. By implementing Art. 168a of the VAT Directive, German legislation has indeed provided for such adjustment with specific regard to plots of land (§ 15a (6) UStG). This is in conjunction with § 15 (1b) UStG, according to which full rights of allocation do not apply to real estate that is partially used outside the company if work on the construction of this property commenced after 31 December 2010 or, in particular, a valid purchase agreement is concluded (§ 15 (1b) UStG). EU legislation provides for regulations similar in nature to § 15 (1b) UStG and § 15a (6) UStG for movable corporate assets. However, German legislation has not exercised its option in this regard.

In brief

BFH, ruling of 1 December 2010 (XI R 43/08)

The BFH ruling concerns the requirement of "consolidated tax-group status" as the criterion for financial integration. The BFH requires that a controlling company, be it a corporation or a partnership, must have a direct or indirect holding in the controlled company. For a limited company to be financially integrated in a partnership, therefore, it is not sufficient merely for the individual partners to have acquired majority voting rights in the limited company rather than the partnership as a whole. A control and profit-transfer agreement may not take the place of a direct or indirect holding in the controlled company.

BFH, ruling of 27 January 2010 (V R 21/09)

The BFH qualifies a collector as a taxable person being entitled to deduct input tax on an economic activity if the collector operates as a dealer on the market while building up his collection. In doing so, it is confirming past rulings from 1987 (BFH, rulings of 29 June 1987 – X R 23/82 and 16 July 1987 – X R 48/82). The matter in dispute concerned the right to deduct input tax on expenses incurred in the purchase and storage of new vehicles and vintage cars in an underground parking facility, as well as in the intended development of a roadster. Company C Ltd. bought a total of 126 vehicles, placed them in an underground garage on gravel, and lined the gangways between the cars with a red flooring. There were no signs outside the parking facility to draw attention to the existence of Company C Ltd. With regard to the development of the roadster, hand-written documents calculating the production costs were drawn up and the model name protected by copyright. The BFH rejected the option of deducting input tax in this case, citing a lack of intention to generate sustainable income from the project.

BFH, ruling of 28 October 2010 (V R 35/09)

This BFH ruling concerns the right to deduct input tax on expenses incurred in the construction of a loft extension within an existing building. The BFH confirmed its latest ruling (cf. BFH, rulings of 25 March 2009 – V R 9/08 and 22 November 2007 – V R 43/06), according to which "specific sections of a building" that were created during the extension of an existing building are considered to be independent items for the purpose of assessing the deductibility of input tax and possible splitting according to § 15 (4) UStG. In the case of mixed usage of the converted space, the criterion for splitting input tax in accordance with § 15 (4) UStG is that there is adequate physical separation between the newly integrated quarters and the existing building. The new sections must be adequately separated from the existing building and the entrepreneur must use the new property independently. Any correlation of usage or function may not exist between the existing building and the extension.

BFH, ruling of 7 October 2010 (V R 4/10)

For the minimum threshold pursuant to § 10 (5) UStG to be applied, a specific risk of tax evasion or illegal tax avoidance must exist. According to the ECJ ruling, this risk is not inherent especially in cases where a payment agreed with an associate is less than the expenses recognized according to § 10 (4) UStG for goods and services provided free of charge, yet nonetheless corresponds exactly to the price customary in the market. According to the BFH, this risk is also lacking if the entrepreneur agrees a payment with an associate that is below expenses, and is also less than the customary market consideration, but then pays tax on his service in the amount of the actual market price. This ruling concerned a professional association that was maintaining two holiday homes in leased buildings. The holiday homes were then used by union members and their relatives for a consideration. However, the "half-board" charged for staying at the holiday homes was below the standard market price and even below cost.

NEWS FROM THE BMF:

Implications for German VAT legislation of the ECJ's Eurodental ruling

BMF, guidance of 11 April 2011 - IV D 3 – S 7130/07/10008

The Federal Ministry of Finance (BMF) has concluded from the ECJ's ruling of 7 December 2006 (case C-240/05 – Eurodental) that in the case of conflict, tax exemptions without the option of VAT deduction (§ 4 no. 8 - 28 UStG, § 25c (1), (2) UStG) should prevail over tax exemptions with that option (§ 4 no. 1 - 7 UStG). The corresponding sections of the UStAE have been amended accordingly.

The Eurodental ruling concerned a work supply rendered in the form of the manufacture and repair of dentures. In Belgium, where the supplier was based, a domestic supply of

this sort was exempted from VAT, with the supplier not being entitled to deduct input VAT. In contrast, by way of a special ruling passed by the European legislators, turnover from the sale of prosthetics is subject to tax in Germany, albeit at a reduced rate. Eurodental was not, however, supplying its dentures solely to other domestic Belgian customers, but also to German dentists within the Community. The ECJ had to clarify the issue of whether, solely on account of the intra-Community nature of the supply in question (zero-rated intra-Community supply eligible for input tax deduction), the supplier should be allowed to deduct input tax in Belgium even though a comparable supply made to a Belgian customer would have been tax exempt with no option of deducting VAT.

The ECJ derived from the EU legislation that tax exemptions without the option of VAT deduction applicable within a Community state must take precedence over those that grant the option of tax deduction, even if the supply in question constitutes an intra-Community transaction.

Please note:
The BMF guidance on the ECJ ruling not only establishes priority of tax exemptions without VAT deduction over those with tax deduction based on the intra-Community nature of the transaction; the prioritization applies equally to all other areas where conflicts can occur, e.g. property leases that are tax-free according to § 26 (5) UStG in connection with the NATO Status of Forces Agreement (SOFA) and § 4 no. 12 a) UStG.

Replies to the simplification of electronic invoicing as of 1 July 2011

BMF guidance of 18 April 2011 - IV D 2 – S 7287-a/09/10004

Ahead of the change in VAT law due to take effect on 1 July 2011 relating to the introduction of electronic invoicing planned in connection with the 2011 Tax Simplification Act (status: government draft bill), the BMF has given a reply outlining the concrete details of the future regulations. The BMF's comments focus principally on the following points:

- Forms of electronic invoices

Electronic invoices are invoices that are transmitted by e-mail possibly with PDF or text file attachment, by computer fax or fax server, by web download or by means of electronic data interchange (EDI). The transmission of an invoice from standard fax to standard fax or from computer telefax/fax server to standard telefax will in future be regarded as a paper invoice.

- Permissibility of electronic invoices

Every business within the meaning of § 2 UStG may transmit invoices electronically regardless of their size. The sole prerequisite is the consent of the invoice recipient.

- Recognition of electronic invoice for purposes of deducting input tax

An electronic invoice must be recognized for the purposes of deducting input tax if the authenticity of origin, integrity of content and legibility of the invoice are ensured and the invoice contains all the information required under § 14 (4) and § 14a UStG.

- Transmission procedure

The planned new regulations on electronic invoicing are technologically neutral. The regulations will not prescribe a specific technical transmission procedure so that transmission using DE-Mail or e-Post (in addition to signature or EDI procedures) is permissible.

- Company-internal control procedure

If the company does not use a qualified electronic signature or EDI procedure, the authenticity of origin, integrity of the content and legibility of the invoice must be verified by means of an internal control procedure. It is up to the company itself to determine how this should be done.

- Reliable audit trail

The internal control procedure required is intended to create a reliable audit trail between the invoice and the goods or services supplied. No special new procedures need to be created within the business for this. An accounting system which is equipped for the task can serve as a suitable control procedure. The administration also permits the use of a (documented) manual comparison of the invoice with the order and possibly the delivery note as the simplest form of audit trail. In order to create a reliable audit trail a connection between the invoice and the goods or services supplied must be established. The company should make a comparison of the order, instruction or contract with the delivery note. It is important to note that the audit trail will not be certified by the tax authorities.

- Record of electronic invoices

Electronic invoices must generally be stored in the electronic form in which they were issued or received. For this purpose businesses must adhere to the principles of proper bookkeeping and computer-aided accounting systems as well as the rules of data access and verification of digital documents. Electronic invoices must be stored electronically and may not be kept in paper form.

Please note:
The government draft bill for the Tax Simplification Act 2011 does not contain any transitional provisions. The new regulations would apply to all transactions executed after 30 June 2011. The date on which the invoice was issued is thus irrelevant. This also applies to invoices for advance payments.

VAT treatment of advance payments

BMF guidance of 15 April 2011 - IV D 2 – S 7270/10/10001

§ 13 (1) no. 1 a) sent. 4 UStG requires that advance payments received prior to the supply of goods and services must be taxed. Since advance payments may also constitute a consideration in the form of goods or (other) services supplied, the receipt of these prior to supply of the goods or services may trigger the payment of VAT. According to the BMF, the time at which such advance payments are made is when the economic value flows to the business. As proof of receipt the BMF does not consider it necessary for the consideration (i.e. advance payment) to have already been executed and the tax liability in respect of this to have arisen pursuant to § 13 (1) no. 1 a) sent. 1 UStG. In line with this opinion, sentence 2 has been added to section 13.5 (2) UStAE.

Please note:
The addition to section 13.5 (2) UStAE apparently relates to the specific case in which the supplier is required to pay tax on an advance payment even if the advance payment only constitutes a part of the consideration owed in the course of an exchange or exchange-like transaction.

NEWS FROM BRUSSELS:

EU issues binding implementing regulation on the VAT Directive

Regulation (EU) No. 282/2011 of 15 March 2011 (OJEU No. L 2011/77, 1)

Council Implementing Regulation (EU) No. 282/2011 (hereinafter referred to as "the Regulation") takes effect on 1 July 2011. The Council has changed the contents of Regulation (EC) No. 1777/2005 from 2005, which had been enacted in respect of Directive 77/388/EEC (6th EC Directive), as well as revising it to make it clearer and simpler. The Regulation is intended to exclude possible divergences in the application of the VAT Directive that are incompatible with the proper functioning of the internal market and to ensure uniform application of the VAT system in its current form. It will not prejudice the validity of the legislation and interpretation previously adopted by the Member States. All rules are designed only to bring uniform VAT treatment throughout the EU to specific cases. They are not conclusive for other cases and, in view of their formulation, are to be applied restrictively.

The structure of the Regulation follows the structure of the VAT Directive and affects almost all areas. The most important new provisions include:

- Use of a VAT ID number (cf. Art. 4 of the Regulation)

Certain taxable persons whose intra-Community acquisitions are fundamentally not taxed (cf. § 1a (3) no. 1 a) – c) UStG) can opt to have these acquisitions taxed by communicating their VAT ID numbers (which were issued to them in a different context) to the supplier (cf. § 1 (4) UStG).

- Restaurant and catering services (cf. Art. 6 of the Regulation)

Restaurant and catering services are deemed to be services consisting of the supply of prepared or unprepared food or beverages or both, for human consumption, accompanied by sufficient support services allowing for the immediate consumption thereof. If no such accompanying support services are provided, the supply shall not be considered a supply of services in the form of restaurant and catering services (cf. ECJ ruling of 10 March 2011, case C-497/09 – Bog, C-499/09 – CinemaxX, C-501/09 – Lohmeyer and C-502/09 – Fleischerei Nier (see April 2011 VAT Newsletter)).

- The term "fixed establishment" (Art. 11 of the Regulation)

Art. 11 (1) of the Regulation defines the term "fixed establishment" for the purposes of determining the place of supply of a B2B transaction pursuant to Art. 44 of the VAT Directive (compare the term "permanent establishment" – *Betriebsstätte* – in § 3a (1) sent. 2 UStG and § 3a (2) sent. 2 UStG). A "fixed establishment" shall be any establishment other than the place of establishment of an economic activity as referred to in Art. 10 of the Regulation which is characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs. The allocation of a VAT ID number shall not in itself be sufficient to consider that a taxable person has a fixed establishment (Art. 11 (3) of the Regulation).

- Status of the customer (Art. 17 and 18 of the Regulation)

A non-taxable legal person which has been or is required to be issued with a VAT ID number for the purposes of taxing acquisitions shall be deemed to be a taxable person within the meaning of Art. 43 of the VAT Directive.

In the absence of information to the contrary, the supplier may regard a customer established within the Community as a taxable person and that the place of supply is to be determined using the basic B2B rule if the customer communicates his or her valid VAT ID number. If it can be proved that the customer did not supply a VAT ID number, the supplier – in the absence of information to the contrary – may treat the transaction as a B2C supply. If the customer is established outside the Community, other types of proof are permissible.

- Capacity of the customer (cf. Art. 19 of the Regulation)

For the purpose of determining the place of supply in accordance with Art. 44 (B2B transactions) and 45 (B2C transactions) of the VAT Directive, taxable persons or legal persons

deemed to be taxable persons who receive services exclusively for private use, including by their staff, shall be regarded as non-taxable persons.

- Supply of services involving cultural, artistic, sporting, scientific, educational, entertainment and similar events (cf. Art. 32 and 33 of the Regulation)

Art. 32 and 33 of the Regulation define the right of admission within the meaning of Art. 53 of the VAT Directive to the events listed above and the services associated with the right of admission (cf. § 3a (3) no. 5 UStG).

- Reverse charge involving taxable persons established abroad (cf. Art 53 of the Regulation)

Art. 53 of the Regulation lists criteria for deciding who is liable to pay VAT when a fixed establishment is involved in supplies from taxable persons from other countries, within the meaning of Art. 192a of the VAT Directive. In this context, German law is based on the provision of a supply by a permanent establishment (*Betriebsstätte* – cf. § 13b (7) UStG). According to Art. 53 (2) of the Regulation, a fixed establishment shall be considered as not intervening in the supply if the business uses the technical and human resources of that fixed establishment for transactions which are not necessarily connected to the fulfillment of the taxable supply of these goods or services made within the Member State, before or during this fulfillment. This should also be assumed if the resources of the fixed establishment are only used for administrative support tasks such as accounting, invoicing and collection of debt-claims. If, however, an invoice is issued under the VAT ID number (fixed establishment), that fixed establishment shall be regarded as having intervened in the supply unless there is proof to the contrary.

- Miscellaneous provision on EC Sales Lists (cf. Art 55 of the Regulation)

Suppliers have a fundamental right to notification of the VAT ID number vis-à-vis the customer.

Study on the VAT treatment of the public and charitable sector

The European Commission published a green paper in December 2010, which has stimulated debate on the future of the common VAT system and given European businesses the opportunity to take part in the discussion regarding a simpler, more robust and efficient VAT system. One special topic is the VAT treatment of the public and charitable sector. Copenhagen Economics and KPMG conducted an extensive study on this topic on behalf of the European Commission, which was published on 13 April 2011 (see European Commission website).

Following a detailed analysis of the current situation, the study examines options for optimizing the fiscal treatment of the public sector and charitable institutions. Criticism of today's situation centers around the problem that both public sector institutions active in a public service capacity and VAT-exempt institutions are not subject to VAT but at the same time cannot claim input tax deduction. This means that they always pay more for their purchases than a private business. If a public sector institution receives a particularly favorable deal from a private company for an activity it had previously performed itself (e.g. building cleaning services), the VAT cost factor often prevents a collaboration – for instance, in the context of a public private partnership project – and the associated cost saving.

The solutions suggested in the study range from compensation for non-deductible input tax to complete abolition of the special VAT treatment given to this sector in the sense of full taxation of public services. All affected institutions and their cooperation partners are no doubt eagerly awaiting the upcoming reform developments and their consequences.

Commission requests Germany to extend VAT exemptions for sharing costs of services

Press Release of the Commission IP/11/428 dated 6 April 2011

As part of infringement proceedings, the European Commission has formally requested Germany to amend its national legislation so as to extend the scope of exemption from VAT for services supplied to their members by groups of persons with no right to deduct VAT to include all sectors. Germany has only implemented the EU legislative basis set down in Art. 132 (1) (f) of the VAT Directive in § 4 no 14 d) UStG restricted to services in the medical and healthcare sector. The Commission's request takes the form of a "Reasoned Opinion," the second step of EU infringement proceedings. In the absence of a satisfactory response within two months, the Commission may refer Germany to the ECJ.

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