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German Tax and Legal News

CJEU asked to rule on whether mandatory rebates granted to private health insurances should be considered a discount for VAT purposes

The differing VAT treatment applied by the German tax authorities to mandatory rebates to private and public health insurers may not be in line with the EU Charter of Fundamental Rights

In a decision dated June 22, 2016 (and published on August 17, 2016), the German Federal Tax Court (BFH) requested a preliminary ruling from the Court of Justice of the European Union (CJEU) on whether mandatory rebates granted to private health insurers should be treated as a discount for VAT purposes.

Under German legislation that aims to cover and control the costs of health care, pharmaceutical manufacturers are required to grant rebates on their products to both private and public health insurers. While the rebate granted to public health insurers is treated as a discount for VAT purposes and, accordingly, reduces the consideration received by the manufacturers, the German tax authorities have refused to apply the same VAT treatment to rebates granted to private health insurers. The amount of VAT included in the rebate granted to a private health insurer, therefore, remains irrecoverable for the manufacturer, unlike the VAT included in a similar rebate to a public health insurer.

In its request to the CJEU, the BFH stated that there does not seem to be an objective reason for the difference in the VAT treatment of rebates granted to private and public health insurers, and, therefore asked the CJEU to decide whether German VAT treatment is in line with the EU Charter of Fundamental Rights.

Affected taxpayers should keep the VAT assessments open to preserve their rights to potential refund claims that may result from the CJEU's ruling.

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