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German Tax and Legal News

Lower tax court rules on VAT treatment of mandatory rebates granted to private health insurances which should not be considered as a discount for VAT purposes

Mandatory rebates issued by pharmaceutical manufacturers to public health insurances should not be considered as discounts for VAT purposes if granted to private health insurances.

The Finance Court of Berlin-Brandenburg issued a decision on 7 May 2015, concluding that mandatory rebates issued by pharmaceutical manufacturers to private health insurance are not discounts for VAT purposes (i.e. they do not reduce the consideration received by the manufacturers) and, thus, should not reduce the manufacturer's VAT liability.

The court held that the supply chain for mandatory rebates to private health insurances is different from the supply chain for such rebates to public health insurances where the rebates can be considered as reducing the consideration received by the manufacturer for its supply of pharmaceuticals and thus its VAT liability:

Other than for supplies to public health insurances, the private health insurance is not part of the supply chain for pharmaceutical manufacturers but those are supplied to the customer and only potentially reimbursed by the private health insurance to the customer based on a separate contractual relationship. Any mandatory rebates are according to the court decision thus granted outside the supply chain and should not reduce the taxable base for their supply.

The decision has been appealed to the German Federal Tax Court.

Affected taxpayers should keep VAT assessments in such cases open.

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