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By PwC Deutschland | 21 January 2014

No deduction from travel agent’s turnover for discounts given to travellers

The ECJ has held that a travel agent selling package tours and exempt services on behalf of operators cannot deduct the discount given to customers (travellers) at its own expense from its turnover chargeable to VAT.
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A German travel agent sold travel services to the public on behalf of tour operators in return for a commission chargeable to standard rate VAT as a domestic service. Some of the services provided by the tour operators were subject to margin taxation (the tour operators' margin scheme – TOMS), whilst others were exempt. On its own initiative, the agent offered customers a discount off the published price which it claimed as a deduction from its taxable turnover, citing the ECJ judgment *Elida Gibbs* (case C-317/99, judgment of October 24, 1996). *Elida Gibbs* allowed a manufacturer a deduction for rebates granted by retailers to customers which they charged to the manufacturer direct even though their contractual relationship was with the wholesaler. The tax office granted the claim only in respect of those services falling under the margin scheme in the hands of the tour operators, refusing it in respect of services exempt from VAT altogether.

The ECJ has now held that *Elida Gibbs* is not relevant to the present situation. In *Elida Gibbs*, the discount given ultimately reduced the turnover of the manufacturer and it was therefore appropriate to reduce his VAT basis accordingly. In the present case, the discount remained a cost for the travel agent and had no effect on the results of the tour operators. Rather, these received the catalogue price from the agent and paid him the agreed commission. Any discount paid by the agent had no effect on his taxable turnover, his commission charges to the tour operators.

The ECJ case reference is C-300/12 *Ibero Tours* judgment of January 16, 2014.

Keywords

TOMS, margin scheme, travel agent