



# KMLZ VAT NEWSLETTER

## VAT consequences of Wage Tax changes for company events and small gifts

### 1. Company events

Sec. 19 para. 1 no. 1a Income Tax Act was implemented with effect from 1 January 2015. It contains regulations for company events which were previously found in the Wage Tax Guidelines. One of the most important changes was that the threshold of 110 € was made a tax exemption. Once the costs per person participating in a company event exceeded this threshold, the full amount was subject to Wage Tax. The change resulted in an amount of 110 € being exempt, even if the costs exceed this amount. The Federal Ministry of Finance published a circular on 14 October 2015 regarding this matter in which further details were provided and questions of doubt were clarified. Fortunately, this circular not only contains statements concerning Wage Tax, but also VAT.

#### 1.1. Threshold instead of tax exemption

According to the Federal Ministry of Finance's circular, the Wage Tax related changes do not have an impact on VAT.

### VAT follows Wage Tax but only partly

A few months ago, the Wage Tax regulations for company events and small gifts were changed. This change impacts on VAT. The Federal Ministry of Finance has now given its opinion on this issue. It is no surprise that the Wage Tax regulations may not be fully applied with respect to VAT. In principle, the regulations for Wage Tax are applicable for the VAT treatment for simplification purposes. However, there are also substantial differences between these two types of taxes. In particular, there is no identical treatment if the costs for a company event exceed the value of 110 € per participant.

Hence, the Federal Ministry of Finance adheres to the threshold for VAT purposes and does not implement the tax exemption even if the regulations for Wage Tax, in principle, still apply for the VAT treatment. Company events are still to be treated as unusual and not strictly business-related if the costs per employee and event exceed 110 € incl. VAT (max. 2 events per year). For this reason, sentences 1 to 3 in sec. 1.8 para. 4 sentence 3 no. 6 of the German Administrative Circular, remain unchanged. The jurisprudence of the ECJ (*BLP, Midland Bank, Fillibeck, Danfoss und Astra Zeneca*) and the decision of the Federal Fiscal Court of 9 December 2010 (V R 17/10), regarding a company event following the ECJ principles, do not allow a different treatment. Accordingly, a company event can only be considered either strictly business-related or strictly related to private purposes. Business-related purposes indirectly resulting from the company events, such as an improvement in a company's work atmosphere, are not sufficient for the input VAT deduction.



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### 1.2. Threshold aiming for a consistent tax treatment

It also needs to be considered that the threshold of 110 € was originally implemented in order to ensure consistent application of the tax law. Therefore, sec. 1.8 para. 4 sentence 3 no. 6 of the German Administrative Circular states that it is unnecessary to check whether the benefits are usual or not if the threshold of 110 € is not exceeded. Consequently, the wording in sec. 15.15 para. 2 example 3 of the German Administrative Circular was also amended. It now states that, "in principle", no strictly business-related purposes exist if the threshold is exceeded.

However, companies may still argue that their events are usual and no taxation is applicable even if the threshold of 110 € is exceeded. Companies will only have to provide sufficient reasons as to why strictly business-related purposes prevail. For example, this should be possible for companies with several branches who invite all employees from their different branches to an event. Generally, the companies' intention should be to improve contact and cooperation amongst employees. The mere general improvement of the work atmosphere was not considered to be a sufficient reason, according to the Federal Fiscal Court's decision.

### 1.3. Calculation

The Federal Ministry of Finance's guidelines regarding the calculation of the tax exemption are dubious. According to the Federal Ministry of Finance, the tax exemption is to be calculated by dividing the costs among the persons actually participating. However, this does not consider the fact that companies calculate the costs of an event based on the number of potential participants. Companies plan and organize events in a way that all employees (possibly accom-

panied by guests) may participate. The fact that, ultimately, less attendees participate than first envisaged does not automatically lead to a greater enrichment of the participants. This particularly applies for costs of which the amount does not depend on the actual number of participants, such as costs for venue rental or entertainment.

Better compliance with the VAT system will result if the calculation is based on the planned number of participants. The input VAT deduction is only possible if the supplies acquired are intended to be used for taxable activities and not for the provision of services free of charge to the employees. The decision has to be taken at the moment the service is acquired. Whether the service is acquired for taxable activities has to be decided based on the circumstances existing at the moment the service is acquired. Theoretically, the later provision of services to the employees free of charge are subject to VAT if the costs per participant are higher than expected and exceed the threshold. However, use of the above argumentation should result in companies being able to avoid taxation. The tax authorities should then be informed of this.

### 2. Small gifts

The provision of small gifts is not deemed to be a taxable supply, even though this would actually constitute a free of charge service to an employee. This includes benefits for employees provided by an employer if these are usually exchanged in accepted practice and do not lead to a substantial enrichment of the employee. To date, the threshold was 40 € per small gift. On 22 October 2014, the threshold was increased to 60 €, for Wage Tax purposes. This change will now also be adapted for VAT and sec. 1.8 para 3 sentence 2 of the German Administrative Circular will be adapted respectively.