

**JUDGMENT OF THE
BUNDESFINANZHOF
XI R 24/09 15. 02. 2012**

**Panelist: Judge
Friederike Grube**

THE FACTS OF THE CASE

A → cement — B → cement — C (plaintiff)

A → “money-off-coupons” → — C

C bought cement from a taxable person named B who had bought the cement from A before. A gave a discount directly to C by using „money off coupons.“

A rectified accordingly his taxable amount.

THE PROBLEM

- Is the plaintiff C obliged to rectify the „input“ tax he deducted before?
- National VAT law (§ 17 Abs. 1 Satz 1 Nr. 2 UStG a.F.):
„If the taxable amount for a taxable transaction has changed,
 1. the taxable person who has carried out the supply of goods or services has to rectify the payment of the tax and
 2. the taxable person being the direct customer of those transactions has to rectify the „input“ tax he had deducted before....“

THE SOLUTION

- C is not obliged to rectify the „input“ tax he deducted before, because C was no direct customer of A, but of B
- No violation of the principle of primacy of European law
- No violation of the obligation to interpret the national regulation in the sense of the VAT-Directive 2006/112/EC

DISCUSSION

- Is a taxable person entitled to apply national law if the national law is better than European law?
- Problem: Principle of primacy of European Law
- Are there similar cases in other countries?

LAST COMMENTS

- New proposal of the European Commission about discounts and VAT with the aim to harmonize and simplify the regulations in the MS's of the European Union (10. 05. 2012 – Com (2012) 206)
- Thank you for your attention!