



The 7.5% deduction resulting from RD-Law 8/2010 does not apply in sales when a higher discount was already included in the invoice

Judgment of the Administrative Chamber of the High Court of Andalusia, First section, of 11 September 2014

Background

In our Capsulas of September 2012 we referred to the judgment passed by the Administrative Court 8 of Sevilla, in a case where a hospital had applied a 7.5% deduction on the supply of medicinal products made after 1 June 2010.

The hospital was applying this deduction pursuant to Royal Decree-Law 8/2010. In its judgment, the Court accepted the position of the company, which claimed that the product could be sold at the price that had been offered, which included a discount on the ex-factory price above 7.5%, without the need of applying, moreover, the deduction contemplated in Royal Decree-Law 8/2010. The company also added that the hospital knew the price that was offered by the company because it was stated in the order form, and that the hospital accepted such price when receiving the product.

The criteria are confirmed

Recently, the first Section of the Administrative chamber of the High Court of Andalusia (TSJA) has issued a ruling in a very similar case, confirming the above-mentioned criteria.

In this new case, the company also argued that the 7.5% deduction, which was compulsory under Royal Decree-Law 8/2010, was already included in the invoice that had been issued for the purchase of the product after 1 October 2010, because the price that had been quoted to the hospital already included a discount higher than 7.5% over the ex-factory price. The

company also claimed that this was a direct purchase, and not an operation resulting from a previous agreement.

The regional authority claimed that the 7.5% discount should apply, because the supply was part of a continuous agreement entered into before 1 June 2010 and which was binding on the company. The High Court did not accept the allegations of the regional authorities, claiming that under Spanish public procurement regulations, supply contracts which are considered of a continuing nature have to be granted in accordance with special rules. The Court confirms that the regional authority did not prove that such procedure had been observed. In the absence of a framework agreement or an existing contract where the price had already been fixed, the company may supply its product at a price that already incorporates some discount, and if such discount is higher than 7.5%, then there is no obligation to apply the second deduction again, if the hospital has already accepted the offer from the company.