

Case alert

Boehringer Ingelheim Pharma GmbH & Co KG

December 2017

Summary

This case concerns the correct interpretation of the VAT Directive in relation to the calculation of the taxable amount (the value of a supply) where the initial price charged by the supplier is subsequently reduced after the supply has been made.

The taxpayer in this case is a pharmaceutical company which manufactures medicinal products and supplies those products (with VAT added) to pharmacies in Germany via wholesalers.

Under the system of statutory (public) health insurance, the medicinal goods are supplied to the pharmacies who, in turn, then supply the health insurance funds who then make the products available to their insured customers. The pharmacies provided a discount to the insurance funds which Boehringer reimbursed and the tax authority allowed Boehringer to reduce the value of the initial supply by the amount of the rebate.

For sales through private insurers however, the tax authority refused to allow Boehringer to reduce the taxable amount and Boehringer considered that this was in breach of EU law – in particular, the principle of equal treatment.

Court of Justice of the European Union – Case C-462/16

Back in 1996, the European Court of Justice issued a seminal judgment in a UK referral to the Court involving Elida Gibbs. The issue in that case was simple. Elida Gibbs manufactured and distributed various products that were sold in high street stores. Elida Gibbs published money off vouchers which members of the public could redeem in store thus obtaining a discount on the retail price. Elida Gibbs then settled the discount payments with the retailer so, in effect, the value of Elida Gibbs initial supply of the goods to the retailer was reduced by the amount of the discount.

The Court ruled that, in such circumstances the taxable amount (or value of the supply) for VAT purposes should reflect the amount actually received which was, clearly, the initial price charged less the discount.

Move on over two decades later and the German Courts struggle with the same concepts. In the Boehringer case, supplies of its medicinal products were covered by two regimes. For supplies under public insurance contracts, Boehringer supplied the pharmacies which, in turn supplied the insurance companies who, in turn, supplied the medicinal products to the insured. However, under private health insurance schemes, the products were supplied directly to the insured by the pharmacies. The Pharmacies offered a discount to the insurance companies (in both regimes) which Boehringer reimbursed. The German tax authority allowed Boehringer to reduce the taxable amount to take account of the discounts to public health insurers but refused to allow the same treatment in relation to private health insurers. This was on the grounds that under the private health regime, the insurance companies did not acquire or re-supply the medicinal products, They were supplied by the pharmacies directly to the insured persons and the insurance companies reimbursed the insured person for the cost.

The Court considered the principle of equal treatment. In essence, it ruled that this principle dictated that both arrangements should be treated the same way for VAT purposes. After all, in both situations, the final sum received by Boehringer was less than the initial price charged and, in such circumstances, there should be no differentiation between the two types of supply otherwise the principle of equal treatment would be breached. The taxable amount for VAT purposes must be made up of the amount corresponding to the price at which the products were sold reduced by the discount it provided to the private health insurers.

Comment – The VAT treatment of retrospective discounts has caused a number of problems over the years when determining the taxable amount. This case confirms the ruling in the earlier Elida Gibbs judgment that, in determining the taxable amount, one must have regard to the actual price received which should take account of both the initial price less the discount given. Businesses that offer retrospective discounts should review their VAT accounting procedures.

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