



VAT Alert Belgium

Boehringer Ingelheim CJEU case: Pharmaceutical manufacturer can reduce output VAT for rebates paid to third parties

Summary

On 20 December 2017, the CJEU ruled in the *Boehringer Ingelheim Pharma* case (C-462/16) that a pharmaceutical company should be allowed to adjust its output VAT in relation to statutory rebates paid to private health insurance companies.

Facts

German legislation on health care requires pharmaceutical manufacturers to grant 'rebates' on products, to both private and public health insurers. The rebates are granted after the supply has taken place. While the German VAT authorities accept that a rebate granted to a public health insurer qualifies as a rebate, a different view is taken for 'rebates' paid to private insurers. As such, according to the German tax authorities' point of view, German VAT included in the 'rebate' paid to private insurers was irrecoverable for pharmaceutical companies.

CJEU judgement

In July 2017, the Advocate General opined favourably towards the possibility for taxpayers to adjust their output tax (when granting a rebate to both private and public insurers).

The CJEU followed the AG's Opinion and decided that a pharmaceutical company is allowed to adjust its output VAT in relation to rebates paid to private health insurance companies.

According to the court, the rebate imposed on pharmaceutical companies is set by statute, hence pharmaceutical companies are not free to dispose of the full amount it received. The CJEU decided that *Elida Gibbs* case law applied, and that Boehringer should not account for VAT on more consideration than it actually received.

Impact on the healthcare business

The judgment implies that healthcare manufacturers have an opportunity to ask for a VAT refund on rebates that have to be paid to both public and private bodies. These companies should therefore evaluate their reimbursement schemes throughout the different member states. One should look back at older transactions as refund claims can be made as long as the statute of limitation is open. It should be noted that specific conditions to each reimbursement scheme need to be carefully analysed, and certain criteria need to be fulfilled.

Please contact us if you wish to explore whether this judgment results in opportunities in one or more EU countries.

Contacts

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