



Indirect Tax Alert

VAT recovery on rebates paid “voluntarily” and in cross-border situations?

Jurgen de Kok | Senior Manager
+ 31 88 288 6358 | JdeKok@deloitte.nl

Recently, two cases have been referred to the Court of Justice of the European Union (“CJEU”) for a preliminary ruling on the VAT treatment of pharmaceutical companies paying rebates in a pharmaceutical supply chain.

The outcome of these cases might shed more light on the application of the existing case law on the VAT treatment of rebates and may bring additional opportunities for parties that are paying rebates.

Background

In the *Boehringer Ingelheim* case ([C-717/19](#)) Hungary has requested the CJEU for a preliminary ruling on a national rule under which a pharmaceutical company which makes payments to a public health insurer under a voluntary agreement. Hungary wants to know if the pharmaceutical company is in those circumstances entitled to reduce the taxable amounts.

Also on this topic on rebates in a pharmaceutical supply chain Germany has referred questions to the CJEU in the *Firma Z* case ([C-802/19](#)). In this case a pharmacy assumed that rebates to persons who had a public health insurance policy reduced the taxable base. Particularities in this case are that (i) the pharmacy supplied the medicines as an intra-Community supply from another EU Member State to the health insurer, and (ii) the supplies of the medicines by the health insurer were not subject to VAT. Consequently, no VAT

was effectively charged by the pharmacy, nor was VAT due on the supplies of the medicines in the final leg of the supply chain (to the insured individual).

Impact on healthcare business

The outcome of these cases might shed more light on the application of the existing *Boehringer Ingelheim* (C-462/16) and *Elida Gibbs* case law (C-317/94) and has a broader impact than just pharmaceuticals, as many companies are paying cross-border rebates.

Especially the *Boehringer Ingelheim* case may be of significance to the Netherlands, as the Dutch healthcare system / rebate arrangements seem comparable to the (voluntary) rebates to which *Boehringer Ingelheim* has committed itself in Hungary. In our view, the voluntary nature of the rebate should not prevent companies to reclaim VAT on rebates that are paid.

The judgments could therefore lead to an opportunity to ask for a VAT refund on rebates paid to public and private bodies. Pharmaceutical companies should therefore monitor the pending cases and evaluate their reimbursement schemes throughout the different EU Member States. We will keep you informed about further developments.

Finally

If you have any questions regarding the above, please contact your VAT advisor.

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