



In the European Union Case involving the Pharmaceutical company Boehringer Ingelheim Pharma GmbH & Co, the European Court of Justice has set a precedent on how rebates should be treated for VAT purposes when provided to parties not operating in the same distribution chain.

In detail the European Court of Justice Case C-462/16 - Boehringer Ingelheim Pharma

On 20/12/2017, the Court of Justice of the European Union (CJEU) judged in Case C-462/16, Finanzamt Bingen-Alzey versus Boehringer Ingelheim Pharma GmbH & Co. KG (ECLI:EU:C:2017:1006), concerning whether price discounts granted to a private health insurance company by pharmaceutical companies lead to a reduction in consideration, in the same way they do for public health insurers.

Facts of the case

Boehringer is a pharmaceutical company which manufactures medicinal products and supplies those products, subject to tax, to pharmacies via wholesalers.

As regards the system of statutory (public) health insurance, pharmacies deliver medicinal products to persons covered in the context of a framework contract with the national association of health insurance funds. The medicinal products are supplied to the health insurance funds and the latter make them available to persons insured by them. The pharmacies grant the health insurance funds a discount on the price of the medicinal products. Boehringer Ingelheim Pharma, as a pharmaceutical company, must reimburse the pharmacies or – where wholesalers are involved – the wholesalers for this discount. For the purpose of VAT, the discount is treated by the tax authority as a reduction in remuneration.

As regards, on the other hand, medicinal products intended for persons with private health insurance, the pharmacies issue those products to those persons pursuant to individual contracts with them. The private health insurance company does not purchase medicinal products, but merely reimburses the persons insured by it, upon request by them, for the costs they have incurred. In such a case, Boehringer Ingelheim Pharma must grant the private health insurance company a discount on the price of the medicinal product. The tax authority does not treat this discount as a reduction in remuneration for the purposes of VAT.

The Tax Authority considered that there was no reason justifying the reduction of Boehringer Ingelheim Pharma's taxable amount as regards reimbursements of private health insurance companies. It therefore fixed the VAT that was due from it on the basis of the taxable amount without the reduction.

The CJEU Decision

The court ruled that the discount granted, by a pharmaceutical company to a private health insurance company results in a reduction of the taxable amount in favour of that pharmaceutical company, irrespectively of the fact that the private insurance fund is not the direct beneficiary of the pharmaceutical products.

Way forward: how PwC can help you

The above decision of the ECJ is expected to have significant impact on the pharmaceutical companies and health insurers.

The dedicated team of VAT professionals at PwC is ready to discuss the above mentioned changes and provide any support in relation to the above changes.

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