

By PwC Deutschland | 22 December 2017

# VAT: Divergent treatment of discounts on medicinal products violates EU law

**On 20 December 2017 the European Court of Justice (ECJ) held that the divergent VAT treatment of discounts granted by pharmaceutical companies (i.e. trader/entrepreneur for VAT purposes) to statutory (public) health insurance funds and private health insurance funds constitutes an infringement of EU law. The ECJ followed the Advocate General's opinion and confirmed the doubts of the German Supreme Tax Court which had referred the question to the ECJ under reference V R 42/15.**

## Background

The case related to the discounts which pharma companies are obliged to grant private health insurance funds under the provisions of the Medicinal Products' Discounts Act. In the past these discounts – in contrast to the discounts granted to the state health insurance funds – could not reduce the taxable amount of the relevant pharma company, because – according to the view of the tax authorities- the private health insurance fund (as trader/entrepreneur) was not included in the supply chain as the medicinal product was not acquired by the private health insurance fund itself but rather the fund had refunded the costs of the insured person.

The General Advocate saw an infringement of the principle of equal treatment in relation to the reduction of the taxable amount. Hence a taxable person is not required to be directly contractually bound with the beneficiary of the discount in order to be able to consider the discount in the calculation of the taxable amount.

The ECJ followed this view, considering the discount to the private health insurance fund to be a reduction in price for VAT purposes. This was based, inter alia, on Articles 73 and 90 of the VAT Directive. The value of the consideration is everything which the supplier receives from the customer. Further, in line with Article 90, the taxable amount must always be reduced, where the taxable person does not receive the whole consideration after the time at which the supply took place.

In addition the ECJ referred to its earlier judgment in *Elida Gibbs* (judgment of 24 October 1996, C-317/94). noting that one of the principles on which the VAT system is based is neutrality, in the sense that within each country similar goods should bear the same tax burden whatever the length of the production and distribution chain.

## Source:

ECJ judgment of 20 December 2017 (C-462/16) *Boehringer Ingelheim Pharma*

## Keywords

VAT, price reduction