

Indirect Tax Alert

CJEU rules price adjustments require VAT deduction adjustments

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On 28 May 2020, the Court of Justice of the European Union (CJEU) ruled¹ that if a business is granted a (volume) discount that relates to multiple (prior) transactions, that discount should be allocated to all transactions it relates to. Even if the business granting the retroactive discount does not issue an invoice (or other document), this rule still applies.

This Alert summarizes the CJEU's ruling in the instant case.

Background and decision

World Comm Trading purchased goods from one supplier that were supplied locally as well as from other European Union (EU) Member States. The supplier granted World Comm a volume discount, that World Comm allocated only to the cross-border purchases in its VAT return, which meant that it would not have to make any adjustments to the VAT position it had taken originally. The cross-border purchases were accounted for in the VAT return as transactions on which VAT was payable (on the intra-EU acquisition) and where that same VAT amount was fully deductible. Price adjustments therefore did not affect that "nil" position.

The Romanian tax authorities took the position that the volume discount should also (partly) be allocated to the local transactions, resulting in a repayment of the VAT initially deducted on the local purchases. The CJEU agreed with the local tax authorities and ruled that the EU VAT system requires a business to adjust the VAT position for all transactions that the discount relates to (including the local transactions) after receiving a discount, even if no proper (credit) invoice is issued for the granting of that discount. The fact that the original supplier may not be able to make a similar adjustment does not affect this obligation.

Considerations following the decision

It is important to note that this is not the first case where the CJEU ruled that if a supplier grants retroactive discounts, the business that purchased the goods or services should adjust the amount of VAT initially deducted,² and that a correct VAT invoice is not always required for that purpose.³ However, the previous case dealt with discount coupons and not volume discounts. The World Comm ruling clarifies that this approach is applicable to both types of discounts.

This Decision is very relevant because it reemphasizes that adjustments of VAT deductions have to be made in case of retroactive discounts, even where it is not fully clear from the underlying documentation (e.g., invoices) what transactions these discounts relate to.

Also, the CJEU seems to have reversed its earlier position that the above does not apply to cross-border transactions.⁴ This is, however, only relevant in situations where businesses that can only partially recover VAT are involved.

Implications

The World Comm case confirms that where a business is confronted with a retroactive price adjustment that relates to one or more specific transactions, the VAT that it has initially deducted in relation to those purchases will have to be adjusted as well. This clearly applies to volume or quantity discounts, but it could equally apply to other types of retroactive price adjustments that can be linked to one or more/multiple specific transactions, such as certain transfer pricing adjustments.

Endnotes

1. CJEU 28 May 2020, case C-684/18, *World Comm Trading Gfz SRL v Agenția Națională de Administrare Fiscală (ANAF), Direcția Generală Regională a Finanțelor Publice Ploiești*, ECLI:EU:C:2020:403.
2. CJEU 15 October 2002, case C-427/98, *Commission of the European Communities v Federal Republic of Germany*, ECLI:EU:C:2002:581, par. 66.
3. CJEU 15 October 2002, case C-427/98, *Commission of the European Communities v Federal Republic of Germany*, ECLI:EU:C:2002:581, par. 41.
4. CJEU 15 October 2002, case C-427/98, *Commission of the European Communities v Federal Republic of Germany*, ECLI:EU:C:2002:581, par. 64.

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