

Greece's Tax Administration recognizes recovery of VAT on pharmaceutical rebates to social security organizations and hospitals

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The Greek Tax Administration, through Decision A. 1035/2019 of the Governor of the Independent Authority of Public Revenues (IAPR) published on 5 February 2019 in the *Government Gazette*,¹ explicitly acknowledged the reduction of the taxable amount for Value Added Tax (VAT) purposes for rebates granted by pharmaceutical companies to social security organizations and hospitals pursuant to article 35 par. 3 of Law 3918/2011, as in force.

Specifically, this Decision:

- ▶ Amends previous decision POL. 1115/2016 of the Governor of the IAPR which was issued to regulate the reduction of the taxable amount for VAT purposes regarding claw-backs granted by pharmaceutical companies to social security organizations on the basis of the provisions of Law 4052/2012. Thus, rebates and claw-backs are now treated in a uniform manner from a VAT point of view.
- ▶ Has been issued by invoking court decisions 3447/2015, 3448/2015, 3449/2015 and 3450/2015 of the Greek Supreme Administrative Court. In these decisions, the Supreme Administrative Court ruled that rebates constitute an obligatory limitation of monetary claims of pharmaceutical companies against the social security organizations in relation to supplies of medicinal products by the former to the latter for the benefit of the insured persons, the cost of which (supplies) is covered totally or partially by the social security organizations. In simple terms, this is a situation of reduction/discount of the original consideration for the supply of the medicinal products.

- Invokes the necessity to treat rebates granted by pharmaceutical companies with rebates granted by private pharmacies and private health services providers to social security organizations in a uniform manner. The Greek Tax Administration already acknowledged explicitly in these last two cases the reduction of the taxable amount for VAT purposes.
- Aligns the Greek Tax Administration with the judgment of the Court of Justice of the European Union C-462/16 in the relevant case of the German company *Boehringer Ingelheim Pharma GmbH. & Co. KG*.

According to the amended Decision POL 1115/2016:

- For rebates granted by pharmaceutical companies to social security organizations according to the provisions of article 35 par. 3 of Law 3918/2011, a credit invoice is issued pursuant to article 8 par. 6 of Law 4308/2014 (Greek Accounting Standards).
- The taxable amount is reduced by the amount of the rebate granted as per the credit invoice issued according to article 19 par. 5 of the Greek VAT Code.
- The credit invoice is issued by the 15th day of the following month from when the obligation to grant the discount is triggered and it is recorded in the accounting records of the tax year when issued and in particular in the specific month of issuance.

The impact of this Decision is as follows:

- Decision A. 1035/2019 by invoking article 35 par. 3 of Law 3918/2011 relates to rebates granted by pharmaceutical companies both to social security organizations and hospitals. Also, in relation to hospital rebates, the Greek Ministry of Health had previously adopted a positive stance on the matter as well.
- VAT corresponding to the rebates granted is calculated through internal subtraction, as is also the case for claw-backs, as well as the rest of the rebate situations referred to in the Decision (private pharmacies, private health services providers).
- The reduction of the taxable amount for VAT purposes may take place on the basis of respective notifications of the social security organizations received by pharmaceutical companies as of 5 February 2019 (date of publication of Decision A. 1035/2019 in the *Government Gazette*), even if they refer to original sales of medicinal products prior to this date.
- Pharmaceutical companies may consider the possibility to judicially pursue the recovery of VAT on rebates granted in taxable periods prior to the issuance of the Decision taking into account the prospective statute of limitations or time or other restrictions depending on the case.

Endnote

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