

The deductible input VAT must be reduced when a (global) discount is provided

CJEU stated in important case C-684/18 (World Comm Trading Gfz SRL) that the deductible VAT should be reduced when global volume bonuses are paid.

Background

A Finnish company Nokia paid World Comm, a Romanian company, quarterly bonuses based on its sales' results. Nokia issued a single invoice each quarter showing a negative balance and quoting its Finnish VAT number. Nokia did not separate on this invoice between local and intra-EU deliveries. World Comm reported the entire amounts as reductions in intra-EU acquisitions although part of the discount related to the goods delivered within Romania. World Comm thus reduced its payable VAT and deductible VAT in Romania via the reverse charge on the basis of the single invoice although these bonuses partly were related to the local purchases in Romania to which the reverse charge did not apply. The Romanian tax authorities argued that those bonuses should be considered as price reductions under Article 90 of the EU VAT Directive and required World Comm to pay back the input tax previously recovered in respect of those domestic purchases. Nokia was not anymore VAT registered in Romania and could therefore not reduce the Romanian VAT payable.

CJEU judgment

CJEU stated in its judgement that Article 90 (1) of the EU VAT Directive obliges EU Member States (MSs) to reduce the taxable amount and thus the amount of VAT payable by the taxable person whenever the taxable person does not receive all or part of the consideration after the conclusion of a transaction. CJEU refers to its judgment of 3 July 2019, UniCredit Leasing, C - 242/18, paragraph 37. The latter case concerns the case of non-payment in the framework of a financial lease agreement. CJEU implies that the obligation to correct the taxable amount applies to all price reductions which are applied retroactively. This means that taxable persons / tax authorities are obliged to reduce the taxable amount in case of various retroactive price reductions such as quarterly bonuses based on sales' results.

CJEU further states that tax authorities must impose on a taxable person a review of the VAT deduction originally

applied when those authorities consider that, after this taxable person has obtained rebates for domestic supplies of goods, that the VAT deduction originally applied is higher than the deduction that this taxable person was entitled to apply. Consequently, the tax authorities are obliged to reduce deductible and also payable VAT in case of retroactive price deduction / discounts/ rebates / sales' bonuses.

Implications for EU MSs

Several EU countries consider such volume bonuses as outside of VAT and allow corrections in payable and deductible VAT to be made only if the credit invoices are issued which refer to every single sale's invoice concerned although CJEU has previously stated (e.g. in case C-427/98) that if a supplier grants retroactive discounts, the purchaser must adjust the amount of VAT initially deducted, and that a correct VAT invoice is not always required for that purpose. However, case C-427/98 dealt with discount coupons but this ruling clarifies that the obligation to correct taxable amount also applies to global bonuses based on sales' results and it does not matter whether the seller can adjust payable amount.

All the EU Member States (MS) who do not allow reduction of the taxable amount in case of retroactive price reductions (e.g. quarterly bonuses or discount coupons) or only allow corrections in payable VAT if the credit invoices are issued which refer to every single sale's invoice concerned, should change their approach as a result of this judgement.

Conclusion

The companies should carefully consider the VAT implications of this judgement to the VAT treatment of their (global) discounts provided in various EU countries. This case also could have wider implications to various retroactive price adjustments, even such as transfer pricing adjustments where taxable amount is adjusted retroactively. Until the VAT laws are not harmonized in EU regarding such global discounts and other retroactive

adjustments, mismatches exist among different countries / EU MSs. Internationally operating companies have to consider VAT rules of all relevant countries / EU MSs to ensure that the VAT treatment of their sales' bonuses / volume discounts / rebates is compliant with the VAT rules in different EU MSs. CJEU decision in C-684/18 provides here good guidance for businesses who get more certainty how such global discounts / sales bonuses and other retroactive price adjustments should be treated for VAT purposes. The tax authorities of the various MS should adjust their VAT rules where not already in line with this judgement.

Impact on your business

If you provide (global) bonuses based on sales' results or have other retroactive price adjustments then you should consider the implications of this judgement for your business. This judgement may influence your VAT position and compliance in various EU countries.



Contact

Grant Thornton's international indirect tax team and digital advisory team can assist you in your VAT / customs matters, compliance and update of your systems and processes. Please contact us if you would like to discuss.



Aiki Kuldkepp
Senior Manager VAT
T +31 (0)88 676 97 56
E aiki.kuldkepp@nl.gt.com