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KMLZ VAT NEWSLETTER

Last recipient in a supply chain not obliged to correct input VAT

By means of its judgment of 4 December 2014 the Federal Fiscal Court confirmed its previous ruling regarding cross-border rebates (XI R 25/12; see KMLZ Newsletter 25/2014).

1. Facts

X-Ltd. supplied goods from the UK to a distributor resident in Germany. The distributor declared intra-Community acquisitions in Germany and sold the goods on to a retailer resident in Germany. The retailer deducted input VAT based on the invoices from the distributor. Subsequently, X-Ltd. granted rebates to the retailer. The tax office amended the retailer's input VAT deduction according to the rebates granted by X-Ltd.

2. Decision

Also with regard to the case at hand, the Federal Fiscal Court decided that the retailer was not obliged to reduce its input VAT deduction, neither according to sec. 17 para 1 sentence 2 nor according to sec. 17 para 1 sentence 4 of the German VAT Act.

Cross-border rebates

The last recipient in a supply chain is not obliged to correct his input VAT deduction when he receives rebates from the first supplier in the chain from abroad. The German Federal Fiscal Court confirmed this with its judgment of 4 December 2014 (V R 6/13). In such cases, the taxable base for a turnover subject to VAT has not changed. Furthermore, the tax court stated that, in these sorts of cases, the distributor is not obliged to correct his intra-Community acquisitions. As a consequence, it is more profitable to receive rebates from abroad than from a German supplier.

- **Sec. 17 para 1 sentence 2 of the German VAT Act**

In this respect, the legal relationship between the distributor and the retailer was decisive. The retailer was not obliged to correct its input VAT deduction according to sec. 17 para 1 sentence 2 of the German VAT Act due to the fact that the taxable base for the turnover from the distributor to the retailer had not changed. The consideration for the legal relationship between a distributor and a retailer is, according to sec. 10 of the German VAT Act, everything that the retailer has paid as recipient of the supplies. The value, which the retailer paid to the distributor, had not been changed due to the rebates granted by X-Ltd. This also applies according to Art. 73 of the VAT Directive as the value which the supplier (distributor) received as consideration had not changed.

- **Sec. 17 para 1 sentence 4 of the German VAT Act**

The retailer had an economic advantage due to the rebates granted by X-Ltd. However, sec. 17 para 1 sentence 4 of the German VAT Act does not stipulate the preconditions for the

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correction of the input VAT, but rather determines which taxable person is obliged to correct the input VAT, i.e. the entity which has an economic advantage based on the amendment of the taxable base. Therefore, a precondition for the correction of the input VAT according to sec. 17 para 1 sentence 4 of the German VAT Act is that the taxable base for a turnover subject to VAT has changed. This was not the situation in the case at hand. With regard to the supplies from the distributor to the retailer, the taxable base had not changed. With regard to the supplies from X-Ltd. to the distributor, a turnover subject to VAT was not given, since the supplies from X-Ltd. were VAT exempt as intra-Community supplies.

- **No amendment of intra-Community acquisitions**

According to the tax office, in such cases where cross-border rebates are granted, the distributor should amend his acquisition VAT. The input acquisition VAT and the output acquisition VAT should be calculated separately. They argued that it should be possible to reduce the output acquisition VAT according to the rebates granted by X-Ltd. to the retailer, but the rebates should not reduce the input acquisition VAT. The Federal Fiscal Court did not agree with this approach. They stated that the output acquisition VAT cannot be reduced without also reducing the input acquisition VAT accordingly. As a consequence, the change to the taxable base for intra-Community acquisitions would have no impact, from a VAT perspective, as at the same time the input acquisition VAT would have to be reduced accordingly.

Moreover the rebates granted by X-Ltd. did not influence the value which the distributor had paid in order to receive the supplies. Therefore, the taxable base has not changed.

3. Remarks for the practice

Based on this judgment, it has now been clarified that cross-border rebates do not lead to a correction of VAT neither for the distributor nor for the last recipient in a supply chain. Taxable persons who have received rebates from abroad should review whether their tax office has reduced their input VAT deduction based on these rebates.

Furthermore, this judgment demonstrates that those recipients who receive cross-border rebates are better off than taxable persons who receive rebates from a manufacturer or supplier resident in Germany. If the first supply were subject to German VAT, then the last recipient would have to reduce his input VAT deduction according to the granted rebates.

The Federal Fiscal Court has not yet decided the reverse case where a taxable person grants rebates from Germany to a last recipient who purchases the goods, subject to VAT, from a distributor abroad. The question is, if in such cases the taxable person who grants the rebates can reduce his output VAT. According to the judgment of the Federal Fiscal Court, this should be possible, due to the fact that the precondition is that the first supply is subject to German VAT (see KMLZ Newsletter 25/2014).

As a result, taxable persons are better off with cross-border rebates: The recipient of a rebate from abroad is not obliged to correct its input VAT deduction; a taxable person who grants rebates to a recipient abroad is entitled to correct his output VAT.