



KMLZ VAT NEWSLETTER

New notification regarding price discounts

1. ECJ-judgment *Elida Gibbs* and subsequent decisions

In its fundamental decision of 24 October 1996 (C-317/94), the ECJ referred to price discounts within supply chains. According to the ECJ, the taxable base also changes in the case where a supplier grants a price discount, albeit not directly to the recipient purchasing the goods from him. In general, in such cases, the recipient who benefits is required to reduce its input VAT. However, the German Federal Fiscal Court has decided (judgment dated 5 June 2014, XI R 25/12 and judgment dated 4 December 2014, V R 6/13) that the recipient who benefits is not obliged to reduce its input VAT, when the supply carried out by the supplier granting the price discount is not taxable in Germany (see KMLZ Newsletter 25/2014 and 5/2015).

2. Notification dated 13 July 2017

With its notification of 13 July 2017, the German Ministry of Finance basically implements the above-mentioned two judgments of the German Federal Fiscal Court. In this context, the German Ministry of Finance has completely revised sec. 17.2 of the German VAT Circular and has shortened and consolidated the principles laid down in it.

Price discounts outside of direct supply relations

Based on two decisions of the German Federal Fiscal Court (XI R 25/12 and V R 6/13) regarding cross-border price discounts, the German Ministry of Finance has now completely revised sec. 17.2 of the German VAT Circular. What is pleasing is that the revision provides clarification that a recipient is not obliged to reduce its input VAT if the price reduction is granted by a supplier carrying out a supply of goods from other EU Member States or non-EU countries. However, what is not so pleasing is the extensive obligation to provide proof.

2.1 Preconditions for reducing the output VAT

If, in a supply chain A-B-C, the supplier (A) grants a price discount to (C), the taxable base for the supply from (A) to (B) is reduced. Based on the notification, this principle only applies, if the following preconditions are met:

1. the supplier who grants the price discount carries out a supply of goods taxable in Germany (A to B);
2. the supply to the recipient who benefits from the price reduction is subject to German VAT (B to C); and
3. the supplier granting the price discount (A) can provide proof that the above-mentioned preconditions are met.

2.2 No corresponding input VAT reduction

In general, the recipient who benefits is obliged to reduce its input VAT in the same amount. However, this does not apply in cases where the supplier granting the price discounts carries out an intra-Community supply (A to B). The direct recipient (B) is not obliged to reduce its acquisition VAT, as he has not received the price discount. The recipient (C) has received the price discount and therefore has an economic



Contact: Eveline Beer
Lawyer, Certified Tax Consultant
Phone: +49 211 54095335
eveline.beer@kmlz.de

advantage according to sec. 17 para 1 sentence 4 of the German VAT Act. However, sec. 17 para 1 sentence 4 does not stipulate the preconditions for the correction of the input VAT. Rather, it 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, is that the taxable base for a supply subject to VAT has changed. This is not the case, when the supplier granting the price reduction carries out a VAT exempt intra-Community supply. These principles also apply, if the supplier granting reduction carries out a supply from a non-EU country, i.e. the recipient who benefits is not obliged to reduce its input VAT.

2.3 Obligation to provide proof for supplier

Previously, a supplier granting price reduction vouchers or price reimbursement vouchers was obliged to provide proof of such (see sec. 17.2 para 7 and para 8 of the German VAT Circular). The German Ministry of Finance has now extended the obligation to provide proof to all cases where the supplier grants price discounts to recipients, which do not purchase the goods directly from him. The proof can be based on all documents available to the supplier granting the price discounts. The documents are required to easily and clearly show that the preconditions for the reduction of the output VAT have been met. A new proof obligation has now been implemented requiring that the documents also show whether the recipient who benefits is entitled to an input VAT deduction.

2.4 Obligation to provide proof for recipient

The notification contains a totally new obligation for the recipient who benefits to provide proof. He has to provide

proof when he is not obliged to reduce his input VAT. In general, the following documents are regarded as sufficient proof:

1. Receipt showing the amount of the granted price discount and the description (e.g. number of the voucher)
2. Invoice issued by supplier from whom recipient has purchased the goods
3. Confirmation issued by the supplier granting the price discount that his supplies of goods to his direct recipient are not taxable in Germany including statements on the clear identification of the recipient and on the supplies invoiced by the supplier to his direct recipient.

In particular, the latter mentioned obligation in 3. above, is very challenging from a practical point of view, due to the fact that the supplier granting the price discount is usually very reluctant to disclose the identity of his customers and the respective business relationship.

3. Remarks for the practice

The notification applies with regard to all cases not yet time barred. Companies should therefore review their supply chains and contracts regarding price conditions:

- if they receive price discounts from suppliers from whom they do not directly purchase the goods;
- if the supplier granting the price discounts supplies the goods from abroad; and
- if they have reduced their input VAT.

There is a chance for recipients who benefit to correct the reduced input VAT and obtain a VAT refund. The suppliers granting price discounts should ensure that they can provide the requested proof in order to avoid the reduction of output VAT being retrospectively denied.