



# KMLZ VAT NEWSLETTER

## Last recipient not obliged to correct input VAT deduction

### 1. Background

A taxable person resident in the UK, "A", supplied goods to another taxable person resident in Germany, "B". A carried out zero-rated intra-Community supplies. B declared intra-Community acquisitions in Germany and sold on the goods to a third taxable person, "C". C deducted the VAT charged in the invoices issued by B as input VAT. A granted price reductions directly to C. The tax office regarded the price reductions granted by A as an amendment of the taxable base with the consequence that C had to correct its input VAT deduction according to sec. 17 para. 1 sentence 4 of the German VAT Act.

### 2. Judgement of the Federal Fiscal Court

The German Federal Fiscal Court decided that the last recipient (C) in a supply chain is not obliged to correct his input VAT deduction.

A precondition for the correction of the input VAT deduction is that the taxable base has changed. However, the taxable base for the supply from B to C has not changed due to the fact that it was not B who granted the price reduction. If the

### VAT corrections regarding cross-border rebates

The last recipient in a supply chain is not obliged to correct his input VAT deduction if he receives rebates from a manufacturer not resident in Germany. This is based on a judgment of the German Federal Fiscal Court. However, what is not yet decided is the reverse: Is it possible that the manufacturer resident in Germany corrects his output VAT if he grants rebates directly to the last recipient not resident in Germany and if VAT is due for the supply of goods to his customer in Germany?

first supplier in a supply chain directly grants a price reduction to the last recipient – here A directly to C – generally, the taxable base for the transaction of the first supplier (A) is changed. The transaction carried out by A qualifies as a zero-rated intra-Community supply from the UK to Germany. Therefore, the taxable base for a zero-rated intra-Community supply has changed. However, a precondition for the correction of the input VAT deduction, according to sec. 17 para 1 sentence 1 of the German VAT Act, is that the taxable base for a turnover has changed for which VAT is due. Sec. 17 para 1 sentence 2 to 4 of the German VAT Act only stipulates which taxable person has to amend its input VAT deduction: The one who is the recipient of the supply carried out by the first supplier (sec. 17 para. 1 sentence 2 of the German VAT Act) or the one who economically benefits from the rebates granted by the first supplier (sec. 17 para. 1 sentence 4 of the German VAT Act).

### 3. Remarks for the practice

It was correct to decide in the case at hand that the claimant (C) is not obliged to correct its input VAT deduction. Other-



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wise, it would lead to an overpayment of output VAT in favor of the tax authorities and, therefore, the principles of neutrality of VAT would be violated.

### **3.1 Last recipient resident in Germany receives rebates directly from a manufacturer not resident in Germany**

According to the judgment of the German Federal Fiscal Court, taxable persons can ask for an amendment of already reduced input VAT deductions if they have directly received price reductions from manufacturers not resident in Germany. However, this is only possible if the foreign manufacturer carries out a zero-rated intra-Community supply to B and the last recipient purchases the goods for which VAT is due in Germany. The concerned taxable persons can file amended VAT returns based on the judgment of the German Federal Fiscal Court and increase their input VAT deduction.

### **3.2 Last recipient not resident in Germany receives rebates directly from a manufacturer resident in Germany.**

The question is whether in the reverse case, i.e. if the manufacturer granting the rebate is resident in Germany, whereas the last supplier (C) is not resident in Germany, the manufacturer can minimize his VAT liability.

- **Amendment of the taxable base of a turnover for which VAT is due**

According to the judgment of the German Federal Fiscal Court, the manufacturer can correct his VAT liability, according to sec. 17 para. 1 sentence 1 of the German VAT Act, with respect to the supplies he has carried out to B, provided that VAT is due for the supplies in Germany. This would be the case if the supply from the German manufacturer to the dealer (B) would be a supply without movement in a chain transaction. According to the wording of sec. 17

para 1 sentence 1 of the German VAT Act, it is not a precondition for the amendment of the VAT liability that the supply to the last recipient (C) is not VAT exempt. The amendment of the VAT liability would lead to an overpayment of input VAT at the expense of the tax authorities as neither the dealer (B) nor the last recipient (C) are obliged to correct his input VAT deduction.

- **Case not yet decided by a higher tax court**

It has not yet been decided whether, in the case of VAT exempt supplies, a member state has the right to refuse the first supplier in a supply chain (A) the amendment of the VAT liability or whether additional preconditions have to be stipulated in order to refuse the decrease of the VAT liability. In the case of *Ibero Tours* C-300/12, the German Federal Fiscal Court asked the ECJ this question. However, the ECJ did not supply a response. In the case of *Ibero Tours*, the ECJ decided that the agent who granted the end consumer price reductions at the expense of his commission was not entitled to claim a reduction of the taxable base and therefore it was irrelevant whether VAT was due for the procured turnover or not.

- **Recommendation regarding proceeding of German manufacturer**

German manufacturers can, based on the wording of sec. 17 para 1 sentence 1 of the German VAT Act and the judgment XI R 25/12 dated 5 June 2014 of the German Federal Fiscal Court, minimize their VAT liability. According to this precondition, for amendment of VAT liability it is only required that the taxable base of a supply for which VAT is due has changed. However, based on the unclear legal situation, it is recommendable that German manufacturers disclose the facts and relevant legal opinion vis-à-vis the tax office.