

CJEU in World Comm Trading case: always adjust the recovery of VAT after receipt of a discount at a later date

On May 28, 2020, the European Court of Justice (“CJEU”) rendered its judgment in the World Comm Trading case (C-684/18). In this case, the CJEU examines the VAT implications for taxable persons receiving price discounts (for example, in the case of volume discounts or canceled sales). The CJEU ruled that a price discount leads to an adjustment of the recipient’s VAT recovery, even in the absence of a (credit) invoice specifying the supplies to which the discount relates. For the adjustment of the VAT recovery, it is also irrelevant that a supplier can no longer issue a correct (credit) invoice because it has ceased its activities.

1. Background and point of law

World Comm Trading is a company established in Romania whose activities include the sale of mobile telephones. It entered into a distribution agreement with Nokia, Finland on April 1, 2004. Under this agreement Nokia supplied mobile telephones to World Comm Trading from Finland, Germany and Hungary. Nokia issued invoices for these intra-Community supplies of the telephones using its Finnish, German and Hungarian VAT numbers respectively. World Comm Trading reported these supplies as an intra-Community acquisition in its VAT returns and recovered the VAT charged on these acquisitions as input tax in the same returns. Nokia used its Romanian VAT number for the local supplies in Romania and charged Romanian VAT to World Comm Trading.

Nokia granted a quarterly volume discount to World Comm Trading if a certain number of mobile telephones were purchased. Nokia sent one invoice with a negative amount in respect of these discounts. These invoices only report Nokia’s Finnish VAT number, even if some of the discounted products were supplied in Romania.

In 2014, the Romanian tax authorities found that World Comm Trading had incorrectly included the discount in its VAT returns by failing to distinguish between the discounts for domestic and intra-Community supplies. Because World Comm Trading acted as if the discounts were entirely associated with intra-Community supply, the adjustments for the amount remitted and the amount recovered were reported as reverse charged VAT in the same World Comm Trading VAT return (as opposed to a refund to Nokia and a payment from World Comm Trading). In response to this, the Romanian tax authorities intend to refuse the VAT recovery for the discounts related to the local Romanian supplies as well as to charge penalties and interest.

According to World Comm Trading, the Romanian tax authorities take an excessively formalistic stance by demanding that domestic discounts be recorded separately. In the company’s view, the treasury is not disadvantaged by the way in which it has accounted for Nokia’s discount. Furthermore, Nokia is no longer active in Romania and can no longer issue invoices using a Romanian VAT number for the discounts relating to domestic supplies.

World Comm Trading would have to adjust its recovery (and repay the difference in VAT), while Nokia would no longer be entitled to a repayment of the overpaid VAT. The Romanian court therefore wondered whether, also on the basis of the principles of neutrality and proportionality, World Comm Trading can be obliged to make this repayment.

2. CJEU judgment

Referring to its *Kreissparkasse Wiedenbrück* judgment (C-186/15), the CJEU considers that an adjustment of the VAT recovery is necessary if there is a change in one of the factors on which the deductible VAT is based (e.g. the receivable changes due to the granting of a discount). The amount of VAT ultimately deductible must correspond to the amount that would be deductible if the discount had already been taken into account in advance. Based on this, *World Comm Trading* is obliged to adjust its VAT recovery.

The CJEU also argues that it is irrelevant that *World Comm Trading* did not receive separate invoices for the discounts distinguishing between domestic and intra-community supplies. Even in the absence of such an invoice, *World Comm Trading* is obliged to make this distinction in its VAT returns. Elaborating on this, the CJEU noted that the deductible VAT must also be adjusted regardless of whether the supplier can claim reimbursement of the overpaid VAT. With reference to its judgment in *FIRIN* (C-107/13), this does not affect the right of a tax authority to repayment of the excess VAT deducted.

3. Impact on the Dutch practice

The CJEU judgment confirms that in the case of price discounts such as volume discounts, an adjustment must be made to the initial VAT recovery, regardless of whether this is offset by repayment of the VAT remitted.

It follows from the *World Comm Trading* judgment that it is important to meticulously implement price discounts and to issue (credit) invoices that correspond to the actual situation so that the customer is able to correctly and easily adjust its VAT recovery. The judgment underlines how important it is that (credit) invoices concerning price discounts indicate the underlying services to which they relate. It is therefore also important that the VAT implications are carefully considered when the (volume) discounts are legally established. The ERP system should also be set up correctly.

It is quite possible that there will be a drop in demand due to the current corona crisis and that acquisitions may consequently be canceled in whole or in part. In these cases, too, it is important to adjust the VAT recovery if a price discount is granted for this purpose. Think carefully about the VAT implications and ensure that these are discussed with the other contracting parties in good time so that there are no misunderstandings, which could potentially ultimately lead to VAT becoming an unnecessary cost item.

The tax advisors of the Indirect Tax group of Meijburg & Co will naturally be pleased to help you identify the implications of the judgment in the *World Comm Trading* case. Feel free to contact one of them or your regular advisor for more information.

Meijburg & Co
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