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VAT on building with solar generator deductible on notional turnover

The Supreme Tax Court has held that the VAT on buildings not otherwise used for business, but carrying a solar generator on the roof is deductible in the ratio of the notional rentals achievable.

The Supreme Tax Court has handed down three decisions on the deductible portion of the input VAT on the costs of a building carrying a solar generator mounted on the roof, but not otherwise serving a business purpose. The power generated was sold to the local electricity company with VAT. The three buildings were a newly-built wooden shack, a carport and a renovated barn. The shack and the barn were not used for any other purpose; the carport was used as such privately by the owner. The court held that selling power was a business activity entitling the operator to a deduction of the related input tax. However, the entire cost of the building could not be ascribed to the business, as it could be used for other purposes even if it were for the moment empty. Basing the proportion of deductible input tax on the floorspace or surface area was inappropriate, as use of the roof as a mount for the generator (essentially a series of photo-electric cells) did not affect the use of the interior. Accordingly, the proportion had to be based on a turnover key. The court suggested the ratio of notional rent achievable from letting the roof as a place to mount a solar generator to that achievable from letting the building as a shack, carport or barn. It did not give any hint as to the matters to be taken into account in establishing these notional rentals, but did qualify its finding with the suggestion that the taxpayer might be able to advance a more suitable basis of apportionment when the case was re-heard by the lower court in order to establish the figures.

Supreme Tax Court judgments of July 19, 2011 XI R 29/09 (shack), XI R 21/10 (carport) and XI R 29/10 (barn) all published on November 9

Schlagwörter

photo-electric, solar generator