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By PwC Deutschland | 10. Oktober 2012

Building work as a service?

An ECG advocate general has suggested the court rule building work to be in general a service. Under national law, it may be a delivery of goods in specific cases, though this may not be dependent upon a single factor.

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A German property developer reverse charged an invoice from a building company for the construction of housing. This position was based on German law which treats building work as a delivery of goods if the builder works with his own materials. Later, the property developer's management changed its mind and decided, on the basis of its own interpretation of the Sixth Directive, to regard the building work as a service not open to the reverse charge mechanism. It requested a refund from the tax office on the basis of this decision. The tax office refused this request.

The ECJ advocate general on the case has suggested the court hold that building work is generally a service. It might, in specific cases be a delivery of goods; however, such a conclusion can only be reached on the basis of full consideration of all the circumstances, and can never be dependent upon a single factor taken in isolation. Thus the German legal provision can, as such, in the view of the advocate general, no longer be applied.

The ECJ case reference is C-395/11 *BLV*, opinion of September 12, 2012.

Schlagwörter

building work