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VAT input tax apportionment by value for gaming hall

The Supreme Tax Court has held the tax office to be correct in insisting that a gaming hall operator apportions his inputs by turnover, rather than by space used, where the physical division was only temporary.

The VAT Act requires that a business allocate its tax on inputs used for both tax-free and taxable turnover on an “appropriate” basis. Allocation in proportion to the turnover itself is only “appropriate” if no other “appropriate” basis can be found. This contrasts with the provision in the VAT Directive calling for allocation by turnover, unless some other basis is “more precise”. A gaming hall operator chose to divide his dual-use inputs by floor space used for tax-free gaming machines and taxable game players. The tax office took the view that the division should be by turnover. Most of the space was taken up by the game players, but most of the turnover came from the gaming machines.

The Supreme Tax Court has now confirmed the tax office in its view. The floor space was divided only by partitions and rows of pot plants. The division was far from permanent and thus not an “appropriate” basis for the allocation of input tax. Since no other “appropriate” basis had been suggested, allocation by turnover remained the only option. In any case, as the court pointed out, the taxpayer himself had said that the two areas were mutually complementary, rendering allocation by floor space even more illusory.

Supreme Tax court judgment XI R 4/10 of September 5, 2013 published on October 30

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