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By PwC Deutschland | 08. Januar 2014

Community law precedence for VAT input tax deduction

The Supreme Tax Court has held that a customer may fully deduct the VAT charged on a supply in accordance with community law, even if national law prescribes a lower rate.

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The German VAT Act used to tax the sale of horses at the reduced rate of 7%. However, the ECJ held on May 12, 2011 that only horses intended for food or fodder ranked for the reduced rate under the VAT Directive (case C-453/09 *Commission v. Germany*). A supplier followed this judgment and charged standard rate VAT on the sale of a show-jumper shortly after the ECJ judgment, but before the VAT Act had been amended to comply. The tax office reduced the input tax deduction of the purchaser to the reduced rate on the grounds that he could not claim a benefit from a community law provision if the corresponding, but invalid, national law provision was more favourable to the supplier.

The Supreme Tax Court has now held in favour of the purchaser and granted him a full deduction for the standard rate VAT actually charged. It made the point that the courts are under a duty to ensure that community law is effective in all respects. It is thus not open to an authority to refuse to allow a taxpayer a more favourable deduction available under community law, merely because national law foresees a lower amount. Thus, in the present case, the full amount charged must rank for input tax deduction, provided only that the other formalities, such as invoicing, are also satisfied.

Supreme Tax Court judgment V R 17/13 of October 24, 2013 published on January 8, 2014

Schlagwörter

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