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Building trade reverse charge only on inputs for building outputs

The Supreme Tax Court has held that the reverse charge in the building trade presupposes that the business customer uses the inputs for his own turnover in building works and services.

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The VAT Act provides for reverse charging in a number of specific instances seen as necessary to improve the security of tax collection. One of these is in the building trade and applies to building works and to repair, maintenance, renovation, alteration and demolition services for other builders. This provision was authorised by the European Commission as a “derogation” from the general system of the Sixth (VAT) Directive. However, the ECJ held in another case that the “derogation” be exercised in a way that ensures legal certainty for all involved (judgment C-395/11 *BLV* of December 12, 2012) and the referring court (the other VAT senate of the Supreme Tax Court) took this to mean that the reverse charge at issue presupposed not only that both parties to the transaction were builders, but also that the customer used the supply as input for his own building turnover. In the present case, the adjudicating senate followed the other senate’s view “in the interests of constancy of legal decision” without further review. The present case was brought by a person describing himself as a “building proprietor” who had commissioned a building project from a subsidiary. The proprietor was active in the building trade, although only as a sideline. He reverse charged all the payments on account, but then accepted a final invoice with VAT. The subsidiary went bankrupt four months later and the VAT was never paid to the tax office. The tax office assessed the proprietor as a building trade customer to reverse charge VAT; the Supreme Tax Court has now decided that the assessment can only be upheld if the building work done served the proprietor’s own building turnover.

Supreme Tax Court judgment XI R 21/11 of December 11, 2013 published on March12, 2014

Schlagwörter

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