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By PwC Deutschland | 14. Juni 2024

Federal Ministry of Finance circular on VAT taxation of public authorities and input tax deductions

In a detailed circular dated 12 June 2024, the Federal Ministry of Finance has commented on the input tax deduction by legal entities under public law operating as businesses.

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Background

As a result of the new regulation introduced by the 2015 Tax Amendment Act (as well as subsequent transitional regulations), which came into force in 2017, legal entities that fulfil the general definition of an entrepreneur in Section 2 (1) VAT Act (“VATA”) are not considered entrepreneurs if they carry out activities that are incumbent upon them in the context of their obligations as a public authority (Section 2b (1) Sentence 1 VATA). This presupposes that treating a legal person under public law (“public entity”) as a non-entrepreneur would not lead to major distortions of competition (Section 2b (1) Sentence 2 VATA). The public entity's particular composition of obligations and activities vis-à-vis its position as a VAT entrepreneur with a generally extensive non-economic activity in the narrower sense (as reflected in Section 2b VATA) requires that special regulations for input VAT deduction be introduced.

Content of the administrative instruction

In its circular the Federal Ministry of Finance addresses the following matters in more detail:

Allocation of input supplies to entreprenneurial activities and input tax deduction (margin no. 3 - 9)

Special regulations on the apportionment of input VAT amounts for legal persons under public law (margin no. 10 - 34)

- Application of a revenue apportionment key to services partially applied toentrepreneurial activities,
- Special Regulations for real estate,
- Flat-rate input tax rate for public entities with minimal entrepreneurial activities.

Organisational units of the federal and state authorities (margin no. 35 - 47)

- Reference is made to input tax allocations vis-à-vis centralised procurements.
- Alternative VAT apportionment for services partially applied to entrepreneurial activities according to the public entity’s budget estimates.

The principles of this Ministry of Finance circular apply for the first time to tax periods under Section 2b VATA that are not subject to a delaration under Section 27 (22) Sentence 3 VATA.

Source

Ministry of Finance circular dated 12 June 2024 (III C 2 - S 7300/22/10001 :001)

Schlagwörter

VAT Act