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By PwC Deutschland | 27. September 2024

Deduction of input VAT upon supply of electricity to tenants

The supply of electricity to tenants is an independent main service and distinct from the otherwise tax-free rental, and the VAT from the purchase of the photovoltaic systems is deductible for the landlord as input VAT.

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Background

The plaintiff lets several apartments free of VAT according to Section 4 no. 12 letter a) of the German Value Added Tax Act (VAT Act)) and had put photovoltaic systems on the roofs of the houses in the year of dispute. The plaintiff stored the electricity generated and supplied it to the tenants at a standard market price. The annual cost settlement was made via individual meters with an itemized statement for each tenant. For this purpose, the plaintiff concluded a supplementary agreement to the rental contract with the tenants which stated, among other things, that the electricity supply contract could be terminated with four weeks' notice to the end of the month.

If the tenant were to obtain the electricity elsewhere following a termination, he had to bear the necessary reconstruction costs (approx. €500). The plaintiff claimed the deduction of input VAT (Section 15 (1) sentence 1 no. 1 VAT Act) from the costs for the photovoltaic installation. The tax office denied the input VAT deduction on the grounds that the electricity supply was ancillary to the VAT-exempt rental.

Decision

The supply of electricity to tenants is an independent main service subject to VAT and distinct from the otherwise tax-free rental. The VAT from the purchase of the photovoltaic systems is deductible as input VAT.

The right for input VAT deduction presupposes a direct and immediate connection between a specific input transaction and one or more output transactions that entitle to deduct input VAT. The right to deduct is only available if the expenses are part of the cost elements of the taxed output transactions and give rise for an input VAT deduction.

As regards the supply of electricity to tenants which the landlord - as in the case in dispute - partly generates himself or, if needed, purchases residual electricity from an energy supplier for supply to his tenants for a fee the Supreme Tax Court held that the landlord's costs for the purchase of a photovoltaic system are not directly and immediately connected to the VAT-exempt letting of residential space but rather to the VATable electricity supplies. The plaintiff charges standard market electricity fees and thereby at least covers the costs of his photovoltaic systems. The costs of the photovoltaic system are also cost elements of his taxed output sales.

In its decision, the Supreme Tax Court summarizes the indications in support of a separate supply (as distinct from the VAT exempt housing rental), as follows:

- Settlement of electricity consumption with tenants via individual (sub)meters.
- Individual (additional) agreements with tenants on the supply of electricity, which provided termination options that differed from the respective provisions under the rental agreement.
- According to the supplementary agreement, tenants have to bear the necessary conversion and renovation costs in case they move to a different electricity supplier.

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- The tenant's contractual freedom to choose his electricity supplier.
- Treating the supply of electricity by the landlord to his tenants as an independent main service ensures equal taxation of the final consumption, since the supplier of electricity to tenants competes with other electricity suppliers.
- In accordance with Section 42a of the Energy Industry Act (Law on electricity and gas supply – „*Energiewirtschaftsgesetz*“), the supply of tenant electricity to end users may not be part of the tenancy agreement.

Source:

Supreme Tax Court, decision of 17 July 2024 (XI R 8/21) – published on 26 September 2024.

Schlagwörter

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