

By PwC Deutschland | 06.04.2011

# VAT on subsidised sales to members based on no more than market price

**The Supreme Tax Court has held that the VAT on below-cost sales to members is to be based on no more than the fair market price of the goods or services.**

Under the VAT Act, the VAT on free or subsidised supplies to shareholders, owners, members or employees is to be based on the costs of making the supply. However, the Supreme Tax Court has now held in a case brought by a trade union running a holiday home for members and their families that this cost basis is not to be taken if the market price of the services was lower. In the case at issue, the holiday home was heavily subsidised and its running costs were substantially in excess of the charges to guests. However, the running costs were also higher than the market price of the services provided. The trade union based its VAT return on the market price; the tax office demanded VAT on the total cost of the supplies, following the letter of the law.

The Supreme Tax Court has now held in favour of the union. Under the Sixth Directive, member states are free to depart from the turnover achieved as the basis for the VAT only to the extent necessary for the prevention of evasion or abusive avoidance. If, however, a taxpayer had already taxed his supplies at their market value, there could, by definition be no question of abuse. Thus, the Sixth Directive offered no basis for taxing supplies at a still higher value based on cost. Accordingly, the VAT Act insistence on cost was to be disapplied in these circumstances.

Supreme Tax Court judgment V R 4/10 of October 7, 2010 published on April 6, 2011

## Keywords

Sixth Directive, below-cost sales, sales to members