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By PwC Deutschland | 08 November 2012

Input tax split not necessarily by turnover

The ECJ has held that the input tax split on dual use assets may be on a basis other than turnover, if such leads to a more precise measure of the deductible amount.

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The Sixth (and now the VAT) Directive provides for calculation of the deductible input tax on costs incurred in connection with both taxable and tax-free outputs in proportion to the respective turnover. However, it also offers member states a choice of other apportionments, including usage. The German VAT Act, on the other hand, accepts the turnover-based apportionment only if no other basis is feasible in the circumstances. A taxpayer with a building let partially for commercial use with VAT charged on the rentals and partly as VAT-free living accommodation, has argued for the turnover-based apportionment on the basis of the precedence of the Sixth Directive over German law, and of the precedence within that directive of the general rule over the exceptions. As “derogations” these should be narrowly applied. The tax office argued for a reduced input tax deduction on the basis of the floor space division between the office and the private dwelling parts of the building. The tax office thus claimed application of German law as it stands, arguing that there was no conflict with the Sixth Directive.

The ECJ has effectively returned the dispute to the German Supreme Tax Court with its finding that the primary rule of the Sixth Directive is that of a turnover-based allocation. The other options listed in the directive are intended to give member states the possibility of achieving a “more precise” result in the given circumstances. It is for the national court to establish whether or not a “more precise” result has been achieved. Unfortunately, the ECJ did not say what it meant by “more precise” in the context of a choice of calculations, each leading to an exact amount, so the final outcome of the dispute is presently unforeseeable.

The ECJ case reference is C-511/10 BLC Baumarkt, judgment of November 8, 2012

Keywords

dual use, input tax split