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By PwC Deutschland | 14 May 2014

Reduced rate VAT on e-books up to national court?

An ECJ advocate general has suggested the court rule that it is for the national court to decide whether e-books are seen as comparable to printed books by the local market and therefore eligible for the same reduced rate of VAT.

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A Finnish dealer in e-books (books on CD, CD-ROM and USB sticks) claimed that a book was a book and that his wares should receive the same, favourable VAT treatment as the printed editions. The tax office refused, saying that a book was a printed work subject to a reduced rate of VAT of (now) 10%, whereas an e-book was a general item subject to the standard rate of (now) 24%. The dealer protested that this distinction had no basis in the VAT Directive.

The ECJ advocate general on the case has suggested the court keep to its existing case law and hold the reduced rate list attached to the directive to be a list of options and not of requirements. It should be open to a member state to subdivide the categories in the list in order to reduce the scope of the privilege. However, each subdivision must be recognisable as a homogenous group of like products and that any separate VAT treatment should not distort competition. In the view of the advocate general, it was possible to treat e-books as separate products from printed publications, since they could not be used without technical equipment (such as a reader). However, whether taxing them at a different rate led to distortion of competition depended upon the consumer climate in the country concerned. This could only be determined by the national court. If the average consumer saw printed books as interchangeable with their electronic versions, taxing them at a different rate would distort completion and would not be permitted under community law. If the average consumer appreciation was of different products, no distortion of competition would result from taxing them at different rates. The advocate general concluded his opinion with the remark that any distinction should be based on the comparison between the items themselves and not on the accessibility of the electronic version to other technical functions, such as search engines.

The ECJ case reference is C-219/13 *K* opinion of May 14, 2014.

Keywords

e-books, reduced rate, reduced rate VAT