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Division of input tax on dual-use buildings

The Supreme Tax Court has laid a second case before the ECJ on the division of input tax incurred in the construction and operation of a dual-use building between taxable and exempt activity.

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A property-owning partnership constructed a four-storey building on one of its sites. Initially it was intended to let the ground and first floors to shops and other businesses and the upper two floors as flats to private individuals. The letting plan changed during the construction period, and this led to delays in finding tenants. Accordingly, there was a period after construction in which significant portions of the building went unlet. The partnership sought to divide the input tax on both the construction and the operating costs on the basis of planned or actual turnover; the tax office pressed for a division by floor space. The partnership followed the Sixth (now the VAT) Directive in dividing the dual-use costs between the taxable and exempt activities in proportion to the respective turnover; the tax office followed the German VAT Act which permits a division by turnover only if no other division is possible. The ECJ has already held that a member state could depart from the turnover-based division of the VAT Directive if the method chosen “guaranteed a more precise” allocation of the input tax at issue – judgment C-511/10 *BLC Baumarkt* of November 8, 2012. Unfortunately the ECJ chose not to explain what it meant by “more precise” when applied to two alternative calculations, both leading to an exact figure. However, that did not stop the tax office in the present case from maintaining that a division by floor space would be “more precise”. The Supreme Tax Court has now turned to the ECJ for further enlightenment.

Supreme Tax Court resolution XI R 31/09 of June 5, 2014 published on July 9

Keywords

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