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By PwC Deutschland | 10 July 2014

Leasing revenue of bank in VAT fraction to include interest portion only

The ECJ has held that a decision by the tax office to base the recoverable input tax of a bank on the portion of taxable leasing turnover reflecting the interest only is acceptable if it better reflects the actual use made of the inputs.

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The Portuguese system of splitting the VAT on dual-use inputs by turnover follows the Sixth (now the VAT) Directive. However, the authorities have the right to require a different split, should the turnover-based allocation distort the amount of input tax recoverable. They availed themselves of this right in requiring a bank with a VAT-able leasing business to base its input tax recovery on its dual-use costs not on the total taxable leasing revenue, but, rather, only on that portion of the leasing revenue corresponding to the implicit interest element in the lease payments.

The ECJ has now held that the approach of the tax authorities is permitted under the Sixth Directive as a “more precise” method of establishing the amount of input tax to be recovered, if it is true that the bank’s involvement in the selection and purchase of the leased items is minimal. If the bank as lessor is essentially providing a financing service, its revenue from the sale of goods does not involve the use of dual-use inputs and should not therefore increase the VAT recovery on those items. Rather, it should take into account only that portion of the leasing revenue reflecting its actual service as a financing institution, that is, the interest element in the lease fees. The actual scope of the bank’s activity in the present case is a matter for the national court.

The ECJ case reference is C-183/13 *Banco Mais* judgment of July 10, 2014.

Keywords

input tax, interest, leasing revenue, leasing turnover