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By PwC Deutschland | 23 July 2014

Waiver of VAT exemption on property rentals can be by room

The Supreme Tax Court has held that the VAT exemption waiver on property rentals presupposes that the tenant can clearly separate the area used for taxable turnover from that used for tax-free activity, but the separation does not have to be documented by separate contract.

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A landlord can waive the VAT exemption on property rentals with the agreement of the tenant and provided the tenant uses the rented facility exclusively on a taxable activity. In consequence, the tax office refused to accept a waiver in respect of office space let to a tenant who used it both for his taxable building management business and for his own asset management. The Supreme Tax Court has now held that if the office space used for the two activities can be clearly divided between them, the exemption on that part of the rental paid for the area used on the taxable activity can be waived without prejudice to the remainder, even if the whole area is let under a single contract. The condition is physical, that the space used on the two activities must be clearly segregated based on the nature and layout of the building. Typically, this implies segregation by room and excludes a further split of individual rooms. The court also added that common areas of the office – corridor, kitchen and washrooms – can be attributed entirely to the taxable usage if only a single room is used (wholly or partially) on the tax-free activities.

Supreme Tax Court judgment V R 27/13 of April 24, 2014 published on July 23

Keywords

VAT waiver, property rental, tenant, waiver