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By PwC Deutschland | 05 March 2015

No reduced rate of VAT on e-books

The ECJ has held that there is no provision in the VAT Directive allowing France and Luxembourg to tax supplies of e-books at other than the standard rate of VAT.

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France and Luxembourg tax supplies of e-books (streaming or download) at a “super reduced” rate of VAT of 3%. The Commission instigated infringement proceedings against both countries.

The ECJ has now held that the supply of e-books is an “electronically supplied service” for which there is no basis in the VAT Directive for charging VAT at other than the standard rate. Arguments against the directive itself based on discrimination against e-books in favour of printed works cannot be brought in infringement proceedings against a member state for failing to apply the EU legislation in question. In any case, the 3% rate (as opposed to the 5% minimum rate) is necessarily invalid for lack of a specific provision in EU legislation.

It is worth noting that this decision appears to conflict, at least in part, with the ECJ judgment C- 219/13 *K Oy* of September 11, 2014 holding that a member state (Finland) was not precluded from taxing books on electronic media (CDs, CD-ROMs and USB sticks) at the standard rate rather than at the reduced rate for printed works, unless the two products were seen as essentially similar in the given consumer market. Why a CD-ROM should be taxed differently from a download has not yet been explained.

The ECJ case references are C-479/13 *Commission v. France* and C-502/13 *Commission v. Luxembourg* (separate) judgments of March 5, 2015.

Keywords

e-books, electonically supplied services