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By PwC Deutschland | 30 January 2020

Deduction of input VAT for a home office: Does the requirement to submit the decision to allocate an asset for private or business use by a certain deadline comply with EU law?

The Supreme Tax Court has doubts as to whether EU law precludes national case law which states that the decision to allocate an asset to private or business use must be submitted to the tax office by the end of the statutory period for submission of the annual VAT return. Accordingly, in a ruling of 18 September 2019 (XI R 3/19 published on 30 January 2020) it has requested clarification from the European Union Court of Justice (ECJ).

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Background

The appellant, who runs a scaffolding business, built a single-family house with a total usable floor space of approximately 150 m², of which approximately 17 m² were allocated to a room designated "work" (completion 2015). However, it was only in the annual VAT return for 2015, which was received by the tax office on 28 September 2016 - but not in the previously submitted preliminary VAT returns - that the appellant claimed pro-rata input VAT for the construction of the workroom. The tax office denied the input VAT deduction because the room had not been allocated to business assets in time (by 31 May of the following year as the statutory deadline for submitting the tax return).

Referral to ECJ

In its referral, the Supreme Tax Court set out its view that, according to the criteria developed in its case law in this regard, the appellant's appeal against the judgment of the lower court should fail. However, the Court called into question, whether a Member State was entitled to provide for a preclusive period for the allocation of assets to a business. Admittedly, EU law expressly assumed an "allocation" of assets in Article 168 a) of the Sixth VAT Directive (Council Directive 2006/112/EC of 28 November 2006). However, it did not contain any more detailed provisions in this regard. The reference for a preliminary ruling is also intended to clarify the legal consequences of an allocation decision that was not taken in good time. If the ECJ were to consider the current (national) treatment to be too restrictive, this would facilitate the possibility of deducting input VAT in cases of business activities and so-called mixed use.

In a further case concerning the acquisition of a photovoltaic system by a private individual, the Supreme Tax Court made a referral to the ECJ in a ruling dated the same day (Ref. XI R 7/19).

Source

Supreme Tax Court decision of 18 September 2019 (XI R 3/19) published on 30 January 2020

Keywords

Home office, allocation of use, input VAT