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German Tax and Legal News

AG questions German standard allocation key of pro rata input VAT deduction for mixed use buildings

Standard use of other than turnover based allocation key not in line with EU VAT Directive

Advocate General Paolo Mengozzi of the Court of Justice of the European Union (CJEU) issued his opinion on November 25 2015 in a case involving Germany's implementation of the allocation key for the calculation of the deductible proportion of input VAT for mixed used buildings (C-332/14, Wolfgang und Wilfried Rey Grundstücksgemeinschaft GbR).

The German Federal Court of Finance (BFH) referred the case to the CJEU for a preliminary ruling to seek clarification of the [CJEU decision in BLC Baumarkt GmbH & Co. KG](#) , which also concerned the way in which VAT recovery should be calculated where buildings are the subject of a mixture of taxable and exempt letting.

The EU VAT Directive requires the input tax incurred for mixed used buildings to be allocated in the ratio of taxable to exempt turnover, unless another method would lead to more precise results. The German VAT Act, however, requires that a turnover-based split may be applied only if no other method is possible.

The advocate general has suggested that the CJEU should find that EU member states cannot systematically insist on "mixed use" input tax being allocated on a basis other than a comparison of taxable and exempt turnover. This would affect the application of the current legal provisions in Germany and their interpretation by the German tax authorities and strengthen the view of the BFH, which recently stated that at least in cases where parts of the building are equipped differently, the turnover based allocation key should be used as being more precise.

The CJEU still must rule on the case and it is unclear whether the court will follow advocate general's opinion.

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