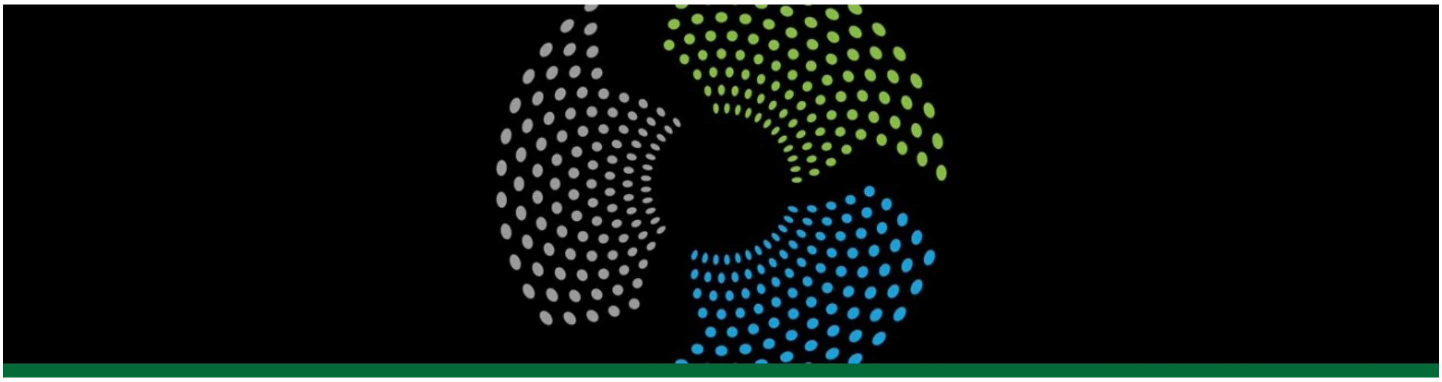

Article

According to Advocate General, Dutch VAT legislation on revising VAT in one go in line with European VAT legislation

On 3 March 2020, the Advocate General (hereafter: AG) of the European Court of Justice (hereafter: the ECJ) concluded that the Dutch VAT legislation with regard to the revision at one time does not conflict with European VAT legislation.

March 5, 2020

Background

In this case, a foundation had an apartment complex built on its own land in 2013 and 2014. In 2013, the foundation fully deducted the VAT on the construction costs because, in accordance with the legislation in force at that time, it intended to charge a VAT taxed integration tax to be indicated when the apartment complex is first opened.

However, the integration levy was abolished on 1 January 2014, so that the foundation no longer had to declare a taxed integration levy when the exempted lease of part of the apartment complex was started in 2014. The foundation has suddenly revised the VAT deducted in 2013 on the construction costs attributable to the commissioned part in accordance with Dutch VAT legislation and refunded it to the tax authorities.

The question is whether this revision of VAT on the original construction costs in one go contravenes European VAT legislation, or whether the revision must take place in ten annual installments in accordance with the special real estate revision scheme (which would result in a cash flow benefit for the foundation).

Advocate General's Opinion

The AG concludes that the Dutch VAT legislation on this point is not contrary to European VAT legislation and that it was rightly revised in one go. According to the AG, in this situation the special revision regulation for immovable property is not complied with because this concerns the period after first commissioning.

If, in contrast to the AG, the ECJ ruled that the Dutch VAT regulation on this point is contrary to European VAT regulation, that would mean that the revision on VAT investment goods that were first intended for taxable use but ultimately used exempt (or vice versa) in annual installments should take place instead of in one go. This can lead to a VAT financing benefit for you.

As long as the ECJ has not yet given a definite answer in this case, we advise you to lodge an objection to your own VAT return in order to safeguard your rights.

Contact

Pablo covers
Director
phoezen@deloitte.nl
+31882888427

in

I have 10 years of experience in the Real Estate market. I am in charge of the Dutch real estate VAT and RETT practice of Deloitte in Amsterdam. I have a strong focus on international real estate ... More

Michelle Mutsaers
Senior Manager
mmutsaers@deloitte.nl
+ 31882885857

in

Michelle has over 9 years of experience in indirect tax practice (RETT / VAT) focusing on the real estate industry. Michelle also worked at the Deloitte London and Dubai office, and is a teacher in t ... More

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