

Overview of VAT jurisprudence solar panels

Through **Wiebren Rijkeboer** - January 23, 2020



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Deduction home with solar panels (and solar schools)

Court of Gelderland 21 November 2016 ([ECLI: NL: RBGEL: 2016: 6317](#))

- House with business part put into use in 2013 (full deduction due to transitional arrangement: construction started in 2010)
- Solar panels were installed in 2014. Has the business use of the home increased?
- Appeal unfounded

Court Arnhem-Leeuwarden 28 November 2017 ([ECLI: NL: GHARL: 2017: 10387](#))

- Appeal against decision of November 21, 2016
- Useful areas of the house in numerator and denominator extended with the part of the roof on which the solar panels are installed
- Appeal upheld
- Cassation 27 September 2019 ([ECLI: NL: HR: 2019: 1438](#)): Article 81 RO

Court of the Northern Netherlands 5 December 2017 ([ECLI: NL: RBNNE: 2017: 5252](#))

- Plaintiff has bought a house and wants to install solar panels on it. However, the roof needs to be reinforced for this, but it is also being renovated. 70% of the contract price is allocated to the solar panels.
- The court is of the opinion that the roof renovation cannot be regarded as a separate investment property because the work did not result in the installation of one structural part that did not exist before on another, already existing investment property (the house).
- Now that no new investment goods have been created, the roof renovation is absorbed into the labeling applicable when purchasing the home: private assets.
- Will the renovation costs then be used for business purposes? The court ruled that there is no direct and immediate link ([HJJ Midland, C-98/98](#)) with the economic activity, since the claimant has not made this plausible. In the opinion of the court, the costs were not incurred with a view to exploitation and do not result from this.
- Finally, the court ruled that it is not possible to pass on the costs, so that the costs do not form part of the revenue.
- The claimant has not succeeded in his burden of proof.

Zeeland-West-Brabant District Court 1 February 2018 ([ECLI: NL: RBZWB: 2018: 933](#))

- Integrated panels. The interested party wants more than the lump sum (indebtedness 1/2; input tax 1/3), including part of the construction costs of the home
- Integrated solar panels are not moveable property, but components of immovable property
- There is no private service for immovable property and the deduction is calculated on the basis of actual use
- Although the actual use is extremely difficult (accurately) to determine, the burden of proof lies with the person concerned, that the risk should remain with him. Did not succeed.

Court Den Bosch 21 June 2019 ([ECLI: NL: GHSHE: 2019: 2249](#))

- Appeal RBZWB of 1 February 2018
- The interested party appeals to the Arnhem Court of Appeal on 28 November 2017
- Court: "There is no question of an equal assessment framework".
- Furthermore, not well comparable because this is a real estate (integrated), and movable property in that case
- Determining the deduction is extremely difficult, but the inspector's calculation (Question and Answer Decree) is not unreasonable.
- For more deductions the Court refers to HR 3 February 2006 (pro rata): the actual use must be based on objective and accurate data. This burden of proof also applies here (based on Article 11 (4) of the Act).
- Appeal unfounded

Court of Gelderland 9 April 2018 ([ECLI: NL: RBGEL: 2018: 1612](#))

- Solar panels on a newly built home that is also partially rented to dga BV
- Plaintiff also wants a deduction for renting mixed areas (entrance, kitchen, living room)
- Court follows court ruling November 28, 2017: extension of useful spaces
- No rental with option possible for non-self-contained spaces used

Court Arnhem-Leeuwarden 7 May 2019 ([ECLI: NL: GHARL: 2019: 3986](#))

- Appeal against decision of 9 April 2018
- Property is from after January 1, 2011: different legal regime ("there is no question of an equal assessment framework")
- House too far away from solar panel entrepreneurship; the costs are not directly included in the price or included in the general costs (reference to [Iberdrola](#) and [AB SKF](#)). The interested party demonstrates an incorrect view on causality.
- The interested party is not entitled to deduct VAT that is imposed on the (construction) home and plot

Court of Gelderland 18 March 2019 ([ECLI: RBGEL: 2019: 1163](#))

- The claimant is an entrepreneur for VAT
- The property itself is not used for business purposes, but according to the claimant the entire property is used for the operation of the solar panels
- The court is of the opinion that the use in the home has not changed due to the placement of the solar panels
- However, the use of the home has changed due to the attachment of the solar panels to the home.
- Part of the roof has been given a business function and therefore extension of the useful spaces (in accordance with the Arnhem-Leeuwarden Court 28 November 2017)

Zeeland-West-Brabant District Court March 29, 2019 ([ECLI: NL: RBZWB: 2019: 1335](#))

- No business use of the home; integrated solar panels only
- As part of the roof is used for taxable activities, the home also has a business function and the business assets
- Court uses the Arnhem-Leeuwarden Court formula November 28, 2017
- The inspector claims that the contents of the house and roof are 'apples and pears'. The inspector is right to a certain extent.
- Home deduction anyway: $1/3 \times 43/376 \times$ property tax

Court of the Northern Netherlands 2 May 2019 ([ECLI: NL: RBNNE: 2019: 1927](#))

- No business use of the home; only solar panels
- Roof has business function; no assessment against 'direct and immediate connection'
- Court uses the Arnhem-Leeuwarden Court formula November 28, 2017

Court of the Northern Netherlands 8 August 2019 ([ECLI: NL: RBNNE: 2019: 3472](#))

- Solar panels at a Protestant Christian school ('Zonnescholen')
- For education, the school is not a VAT entrepreneur (non-economic)
- The delivery contract (services for consideration) shows that only the surplus (that which is not consumed itself) is delivered
- This implies that now that economic and non-economic transactions are involved, only the input tax that relates to the economic transactions is deductible: correction of the purchase VAT.

Court of Gelderland 29 November 2019 ([ECLI: RBGEL: 2019: 5488](#))

- Court returns to earlier judgment
- Rb uses arguments from Court 7 March 2019: direct and immediate connection with price at a later stage or general costs included as such in the price
- New argument: connection because without building measures (in this case solar panels) no building permit would have been obtained.
- Rb: even if that proposition is proven, it does not follow that the house was built for the purpose of supplying energy (rather the reverse is the case)
- Rb follows the courts of Arnhem and Den Bosch: no deduction.

Court of Gelderland 3 February 2020 August ([ECLI: NL: RBGEL: 2020: 582](#))

- Solar panels at primary schools ('Sun schools')
- It is not in dispute that providing primary education is not an economic activity.
- Plaintiff has estimated the deduction for energy supply to the grid at 50%.
- On appeal, the plaintiff wants 100% deduction primarily because all energy is supplied to the grid - with a reference to the [Fuchs](#) judgment. Alternatively, a deduction higher than 50% because the actual ratio in the longer term must be considered.
- Although the principle based on the law is the ratio in the quarter of commissioning, the inspector accepts plaintiff's subsidiary position.
- The supply contract shows that only the electricity that is generated in addition to self-generated electricity is supplied.
- Rb: if all generated energy is supplied to the grid and for a fee, there is a 100% right to deduct. In connection with deduction, the burden of proof lies with the claimant.
- Now that the plaintiff does not know how the feed-back of generated energy technically works, the court must assume on the basis of the contract that the directly used energy is not supplied to the grid. The claimant is therefore not entitled to a deduction for this.
- The calculation for a higher deduction on the basis of an entire calendar year cannot be judged by the court because it concerns a revision and this is not an issue in these proceedings, because it concerns both taxed and non-economic benefits.
- The court declares the appeals unfounded.

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