

## VAT Alert

### News you can count on



12 September 2013

#### VAT Directive does not provide for the application of a 'worldwide pro rata'

*On 12 September 2013, the Court of Justice of the European Union (CJEU) delivered its judgment in the Crédit Lyonnais case, on the calculation of the pro rata deduction for VAT taxpayers working through head office and branch structures.*

##### The case

The case deals with the calculation of the pro rata for companies with foreign branches.

Le Crédit Lyonnais (LCL), the French head office, was of the opinion that the head office and its branches do not constitute a distinct legal entity and therefore have to be considered as one single taxable person when calculating the pro rata for the VAT deduction. Therefore, to define their VAT deduction, the head office and the branches should take into account the global turnover realised by the company including the turnover from the foreign branches. This would mean that non-EU branches would allow a substantial increase in the deduction percentage.

##### The opinion of the Advocate General

In an Opinion delivered by the Advocate General on 28 February 2013, the question whether Member States can allow or prohibit the use of a global pro rata deduction methodology had not been answered affirmatively, but was left to the Member States to regulate.

##### The judgment

The CJEU made a bolder and more restrictive decision whereby it affirms that the deduction method's modalities are to be determined by the Member State with jurisdiction over the head office of the branch concerned. The deduction method applied by one establishment cannot in principle take into account the turnover realised by the taxable person in his foreign establishments.

Doing so, the Court favours simplicity and excludes distortions stemming from the inclusion of turnover which is (geographically) distant from the place where the costs were made.

The Court explicitly rejects the reasoning whereby a fixed establishment outside the EU could affect the deduction system to which the taxable person is subject in his EU country of establishment. It also rejects the idea whereby a Member State might allow companies to adopt a deduction methodology per business sector, whereby such sector would also include the activities of foreign establishments.

##### The impact

For companies operating through a head office - branch structure in an international context, the decision's impact will have to be determined for each of the jurisdictions. Today, certain countries apply or allow the use of

a global pro rata and may be forced to change their system in the future.

Other countries apply a local pro rata calculation which may require fine-tuning if it contains rules reflecting the cross border use of goods and services bought by the local establishment. One such case is Belgium, where the local pro rata calculation exceptionally includes turnover of foreign establishments, if the costs for realising that foreign turnover are borne by the Belgian establishment.

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