

Input VAT newsletter

September 2013 – Special Edition



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In your diary

Final deadline for submitting your return for:

June 2013:
13 September 2013

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Le Crédit Lyonnais (C-388/11) – Worldwide general prorata rejected by the CJEU

On 12 September 2013, the Court of Justice of the European Union (CJEU) published an important judgment for companies taking the turnover of their foreign branches into account for the calculation of the general prorata of their head office (case C-388/11 Le Crédit Lyonnais).

General prorata

The general prorata (based on which the input VAT deduction right is computed as a percentage of the turnover allowing an input VAT deduction to the total turnover) is one of several methods used by VAT taxable persons to calculate their input VAT deduction right.

However, there is no specific provision in the EU VAT Directive in terms of territoriality regarding the turnover to be taken into account for the computation of the general prorata of EU companies having a foreign branch, i.e. a branch established either in another EU Member State than the head office or outside the EU.

In Le Crédit Lyonnais case, the French Administrative Supreme Court (“Conseil d’Etat”) referred questions to the CJEU in order to know whether the turnover of foreign branches may be taken into account for the calculation of the general prorata of a head office.

Dispute and questions referred to the CJEU

Le Crédit Lyonnais (“LCL”) is a French banking institution having its head office in France with foreign branches in other EU Member States, as well as outside the EU.

In the course of an audit of LCL’s accounts for the period between January 1988 and December 1989, French VAT Authorities refused LCL’s calculation of its general prorata in France and issued a reassessment notice.

LCL filed several claims disputing the reassessment. In its last claim, LCL argued that the turnover received from third parties by its foreign branches should be included in the calculation of the general prorata of the French head office.

LCL's claim was rejected by the VAT Authorities and by the Administrative Court of Paris. The Administrative Court of Appeal of Paris affirmed the lower court. The claim was then introduced to the Conseil d'Etat which decided to stay the main proceedings and to refer questions to the CJEU for a preliminary ruling.

The referring court asked, in essence, whether, and if so to what extent, the Sixth Directive requires EU Member States to allow VAT taxpayers to make use of what is commonly referred to as "worldwide prorata", i.e. the possibility to take the turnover of branches established either in other EU Member States or in third countries into account for the calculation of the general prorata of the head office established in their respective national territory.

Decision

The CJEU ruled that the provisions of the Sixth Directive must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in an EU Member State, may not take into account the turnover of its branches established either in other EU Member States or in third States.

The CJEU further states that EU Member States are not allowed adopting a rule for the calculation of the deductible proportion per sector of business of a company subject to tax which authorises that company to take into account the turnover of a branch established in another EU Member State or in a third State.

Practical impacts in Luxembourg

The importance of this decision lies in the fact that a VAT taxpayer may not take into account the turnover of its foreign branches for the computation of the general prorata of its head office. Consequently, one could expect that the Luxembourg VAT authorities will take this opportunity to clarify their position in this respect.

Although this decision concerns a bank, it could affect businesses in others sectors, including insurance companies, private equity structures, real estate developers, and companies from other industries with branches established abroad.

It will be critical for Luxembourg companies concerned by this decision to closely monitor to what extent this judgement would impact their input VAT recovery right. It will also be necessary for Luxembourg VAT taxpayers to pay a special attention to any potential amendments on the recent Circular 765 of 15 May 2013. Of utmost importance will be to follow up on any future potential guidance issued by the Luxembourg VAT Authorities.

The VAT Newsletter is designed to keep readers abreast of current developments, but is not intended to be a comprehensive statement of the law. No Liability is accepted for errors, omissions, or opinions it contains or generally for any reliance placed on this newsletter.

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