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Luxembourg Newsflash - 10 September 2021

Property companies holding real estate assets in Germany - state of play on the input VAT deduction right

The Court of Justice of the European Union ('CJEU') confirmed recently in the Titanium case (decision C-931/19 of 3 June 2021) that the letting of immovable property abroad, where the property owner does not have its own staff to perform letting-related services, does not give rise to a fixed establishment for VAT purposes in the country where the property is located. [You may click here for our newsflash on this topic.](#)

This decision directly targets property companies exploiting immovable property abroad which do not have their own human resources in that location and which are registered for VAT locally for the purposes of (i) charging VAT on the rental income under the VAT option regime and (ii) deducting input VAT on property-related costs. In light of the Titanium case, companies holding and exploiting immovable property abroad without having locally their own human resources would no longer be eligible for a local VAT registration in that jurisdiction. In the case that the property is located in Germany, this would imply that (i) the rental income would be subject to the reverse charge mechanism where the property is rented to German VAT taxpayers and (ii) local input VAT incurred on property-related costs would have to be reclaimed on the grounds of the Council Directive 2008/9/EC of 12 February 2008 ('VAT refund Directive') and not through the filing of German VAT returns. The VAT refund claims based on the VAT refund Directive must in principle be introduced by the 30th of September of the subsequent year.

This decision seems particularly relevant for Luxembourg property companies generating VATable rental income in Germany, which do not have any local staff managing the real estate assets. As per the current practice of the German VAT authorities, Luxembourg property companies which own and rent immovable property located in Germany are considered as German tax residents, meaning that they are VAT registered for VAT purposes in Germany, they charge German VAT on rent (when applicable) and deduct German input VAT incurred in the framework of the German VAT returns. This German VAT practice now appears to be contrary to the Titanium decision and new developments/instructions are therefore expected from the German VAT authorities.

For the time being, we believe there is no immediate protective action to be envisaged concerning how the recovery of German input VAT incurred by Luxembourg property companies in 2020 should be dealt with (the deduction of German VAT incurred in 2020 should continue to be requested through the filing of German VAT returns). This position about the recovery of 2020 German input VAT is in line with the instructions we received from the Saarbrücken VAT office in charge of Luxembourg property companies in Germany.

In view of the expected changes as from 2021, however, Luxembourg property companies generating VATable rental income in Germany should anticipate some forthcoming developments including the formalities and procedures required for introducing a German VAT refund request in Luxembourg.

How can we help?

The Arendt VAT team remains at your disposal to review your business situation and to determine any necessary actions to be taken in light of the forthcoming changes.

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