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# News Flash

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**Adjustment of VAT deductions  
in respect of Capital Goods**

## Adjustment of VAT deductions in respect of Capital Goods

The obligation to adjust the deducted VAT arises to taxable person in respect of capital goods acquired or their self-generation at own expense if he changes the purpose of their use. A change in the purpose of use of investment property is also the leasing of real estate with exemption from tax.

The judgment of the European Court of Justice (ECJ) in **Case C-17/18 – Virgil Mailat, Delii Elene Mailat, Apcom Select SA** dealt with the question whether that company had been obliged to make a tax deduction adjustment. It was assessed whether the sale of an enterprise or of its part had been realized, or rather it was a leasing of real estate.

### A change in the purpose of use of investment property

The Company Apcom Select, managed by Mr. and Mrs Mailat received in May 2007 certain **capital works** carried out on a building in which it was operated a restaurant and also deducted VAT for those works.

In December 2007, the company concluded **under a VAT exemption regime**, a lease contract with another commercial company concerning the building, the investment property and movable property connected with operation of the restaurant.

The new lessee continued to operate the restaurant for business purposes and under the same name and took over the employees, kept the same suppliers and honoured the business commitments previously entered into by the lessor towards its customers.

The company Apcom Select **did not adjust the deducted tax** as it claimed that the leasing of real estate, including fixed assets and movables related to the operation of the restaurant, **constituted a transfer of business** within the meaning of the Directive, therefore Apcom Select had the right to deduct VAT related to the reconstruction works without being obliged to adjust the VAT deduction in favour of the State **at the time of concluding the lease contract**.

### Absence of transfer of ownership rights

The ECJ found that the conclusion of a contract by which a company leases to another company

the property in which it was operated a restaurant, **including all fixed assets and inventory items, cannot be considered as a sale of the enterprise** because the lessee **has not acquired ownership right to the majority of property**, sufficient for realising an independent restaurant activities and could not treat them as "owner".

The leasing of immovable property for the pursuit of a commercial activity, as well as of the fixed assets and inventory required for that operation, must be interpreted as meaning **that the transaction constitutes a single transaction in which the leasing of the immovable property is the principal supply**.

The leasing of immovable property exempted from the tax requires **the adjustment of the deducted input tax**.

### Transaction risk

In relation to the Judgement mentioned above we would like to recommend paying more attention to VAT impacts of transaction related to transfer of business activity and assets to another entity, because **an incorrect assessment of a transaction can often have material consequences**.

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