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By PwC Deutschland | 24. August 2011

Sausage and chip stand sells food if no seating provided

The Supreme Tax Court has held that a mobile stand selling sausages and chips to passers by sells food if it does not provide seating. If it does, the food sales are a restaurant service, even if the seating is primitive, uncomfortable and inadequate.

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Restaurant services are subject to 19% standard rate VAT, whilst sales of food are taxed at the reduced rate of 7%. Tax offices tend to see anything offered for immediate consumption on or beside the premises as a service, whilst many fast food providers like to see their supplies as sales of goods, the service element of the supply being insignificant. A number of appeals are still before the courts and in March of this year the ECJ ruled on four of them in a single, joint judgment. Sales from mobile sausage and chip wagons or from fixed sausage stands for stand-up consumption were reduced-rate sales of food, as were warmed-up cinema snacks, whilst a butcher offering a party service did so as a standard-rate supply.

The Supreme Tax Court has now decided two cases involving the sale of sausages and chips (“French fries” in US parlance) to passing customers. The first was one of those tried by the ECJ and involved sales from a wagon to visitors and passers-by at weekly markets. Customers were expected to eat their food standing, but were able to lean on a shelf running around the wagon. A bin was available for discarded wrappings, uneaten sausage remainders and other litter, and an awning provided some protection from the rain. The Supreme Tax Court followed the ECJ in holding the service element of the supply to be insignificant and ruled that the transaction be taxed as the sale of food.

The second case was brought by the proprietor of a fixed stand set up immediately beside a public bench where customers could (if there was room) sit to eat their sausages and chips. Later, the proprietor added a table and two benches for the use of customers. This furniture was described as “beer tent furnishings”, meaning that it was of cheap wood, collapsible and slightly unsteady. Otherwise, the conditions of sale from the stand appear to have been similar to those of the market day wagon. The Supreme Tax Court held that its wagon decision also applied to the stand for as long as any seating available was not provided by the seller. The mere fact that a bench was there, did not change the nature of the supply by the sausage and chip seller. The bench was provided by the council (local authority) and could be used by anyone. It was not a service in connection with the sale of goods. However, the situation changed with the set-up of, even primitive and inadequate, seating. Seating was reserved for customers of the stand and some customers were able to take their places there. That not all did so was irrelevant. The proprietor was also obliged to keep the seating and table clean with an occasional wipe. This enhanced the nature of the supply and increased the work necessary to provide it. It was now a restaurant service, taxable at 19%.

Supreme Tax Court judgments V R 35/08 (wagon) and V R 18/10 (stand with seating) of June 6, 2011 published on August 24 and following ECJ case C-497/09 *Bog and others* of March 10

Schlagwörter

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