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By PwC Deutschland | 19. Oktober 2011

Cinema snacks taxed at reduced rate of VAT

The Supreme Tax Court has followed the ECJ in holding that snack sales in cinemas are sales of food; seating and other service elements being provided to the cinema patrons as such, rather than to snack buyers specifically.

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A cinema sold popcorn and other heated, or re-heated, snacks from stands in the foyer. The tax office saw these sales as a restaurant service subject to full rate VAT, whilst the cinema saw them as sales of food, to be taxed at the reduced rate. Ultimately, the ECJ handed down a ruling to the effect that the sales were of food, the service elements of the supply being insignificant. The tax office then tried to argue before the Supreme Tax Court that the ECJ had misunderstood the nature of the facilities available to snack customers, seating, tables and toilets, as being only primitive.

The Supreme Tax Court has now rejected the tax office' attempt to turn it aside from its duty to follow the ECJ ruling it had requested on the case before it. It agreed that the ancillary facilities available to snack customers were not primitive. However, it pointed out that they were not made available to snack customers, but rather were available to all patrons of the cinema in that capacity. Cinema patrons used the foyer as a waiting room and as a meeting point, and the foyer furniture was there for their comfort and convenience. The toilets, similarly, were there for all. The only service related to the snacks was warming them up, and this was insignificant beside the sale of the food.

Supreme Tax Court judgment V R 3/07 of June 30, 2011 published on October 19, following the ECJ judgment C-497/09 *Bog* of March 10, 2011

Schlagwörter

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