By PwC Deutschland | 26. Oktober 2011

City sightseeing tours at 7% VAT

The Supreme Tax Court has held that officially authorised city sightseeing bus tours, including "hop on, hop offs", are subject to the reduced rate of VAT for local transport.

Local public transport is subject to reduced rate VAT (7%). Local public transport is any officially authorised route within a community, or between communities but covering a distance of not more than 50 km. A city sightseeing tour operator running to a timetable on a fixed route with a local authority permit claimed liability to reduced rate VAT under this provision. The tax office countered with a claim for full rate VAT (19%) on a sundry service. The tax office maintained that the fixed route was a round trip and therefore not “transport”, as the traveller started and finished at the same place; alternatively, the route was not authorised as the authorisation was invalidated by the recorded commentary, supposedly of appeal to tourists, that had not been mentioned in the permit application. The operator had thus gone beyond the limits of his authorisation with his commentary, invalidating the authorisation as it stood.

The Supreme Tax Court has held that the tour operator was operating an officially authorised route of local public transport and was entitled to the 7% reduced rate of VAT. The route and the stops had been authorised and there was no requirement that the timetable should also be authorised. There was also no requirement that the full journey be completed without interruption. Thus the popular "hop on, hop off” variant of the tourist leaving the bus at the next stop on a whimsy, taking his photographs, sampling the local beer, and then resuming his journey on the next bus still ranked as authorised public transport. The purpose of the transport was irrelevant, as was the fact that the journey (in most cases) started and finished from the same stop. In this, the court drew two interesting parallels, the bus chartered to bring a group of people to the theatre, and the taxi taking a customer to a specific address and then picking him up again on completion of his business for the journey home. In neither case was there dispute as to the application of the 7% rate. The purpose of the journey was thus not relevant to its VAT status.

The court summed up its review of the validity of the permit with the observation that it had been issued by a competent authority, the city council, and was thus binding on other authorities, and on the courts, unless, either its issue was manifestly improper, or was in dispute before the court competent to confirm or annul it. The Supreme Tax Court was not competent to judge on its propriety *per se*, but the fact that it was in dispute could only mean that any impropriety in its issue was not “manifest”.

Finally, the court turned to the issue of ancillary services offered to tour patrons. These were the recorded commentary and the invitation to join free-of-charge guided tours of specific sites along the route. These services were separate and to be taxed at the full 19% rate. However, their value could be estimated, and that value would be nil, if the tour operator were merely offering a service that was, in any event available free-of-charge to the general public.

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