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By PwC Deutschland | 07. Dezember 2011

Aviation fuel duty exemtion only for aircraft used to provide services.

The ECJ has held that the commercial use exemption from duty for aviation fuel only applies to aircraft used for direct provision of services and not to aircraft used for other business reasons.

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A computer component and software developer operated an aircraft for the use of senior executives when visiting customers and other business partners. It maintained that this business use constituted commercial use within the meaning of the Excise Duties Directive and that it was entitled to a refund of the duty on the fuel used for business flights and trips to an aircraft maintenance facility for routine servicing. The German customs office refused the refund because the aircraft operator was not a licensed carrier.

The ECJ has now held that the exempt commercial use does not necessarily have to be that of a carrier, but does have to be the direct provision of services by way of trade. It drew a parallel to an earlier case involving an undertaker engaged in burials at sea. The ships used to take the coffins to the burial grounds were not, strictly, carriers, but were engaged in the direct provision of services. Accordingly, their diesel oil was free of duty. In the present case, though, the aircraft were flown on business, but were not being used to provide services. Their service contribution was indirect and did not entitle the operator to duty exemption. The fuel used on flights to the maintenance facility was also not exempt. The maintenance exemption applied to the fuel used on the maintenance (engine and flight testing) but not to that used on bringing the aircraft to the facility. The exemption entitlement fell to the operator of the maintenance hangar and not to the operator of the aircraft.

The ECJ case reference is C-79/10 *Helmholz,*judgment of December 1, 2011.

Schlagwörter

Aviation fuel, commercial use