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Party service subject to full rate VAT

The Supreme Tax Court has followed the ECJ in holding that a party service provides more than the mere supply of hot and cold food and thus performs a service chargeable to standard rate VAT.

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A butcher operated a party service as a sideline. The service consisted of the delivery of hot and cold food supplemented as needed with the loan of crockery, cutlery, folding tables and staff. He claimed the supply of food to predominate; thus the relevant turnover should be subject to reduced rate VAT. The tax office brought the service features of the supply to the fore, and demanded standard rate VAT on the entire delivery. The Supreme Tax Court referred the question to the ECJ, which gave judgment to the effect that a party service carried out a service if there was any service element additional to the supply of (hot or cold) food, unless there were particular circumstances to show that the service element was negligible (case C-497/09 *Blog et al.* judgment of March 10, 2011 joined with three cases of fast food sold at stands).

The Supreme Tax Court has now followed the ECJ in holding the entire turnover of the party service to be taxable at the standard rate. The three examples remaining in dispute involved the delivery of food together with the loan of two folding tables for the party, the supply of a “hot and cold buffet for 70 persons” and a delivery of wine. With regard to the first, the court emphasised the ECJ’s position that the service element in a party service was already appreciable – if only because the customer took delivery at a precisely agreed time – so that any other service element – charged or not – was sufficient to render the transaction a mixed supply taxable at the standard rate. The loan of two tables in the same connection as the delivery of cooked meat was sufficient for requalification from the straight sale of food. The second example, the buffet, was a service in its own right. The buffet was assembled by qualified personnel able to match and contrast the various dishes as required for a harmonious whole. This alone distinguished it from the sale of food as a reduced rate transaction. The supply of wine was dismissed as irrelevant; alcoholic drinks were always charged to standard rate VAT, regardless of whether they were delivered or served.

Supreme Tax Court judgment XI R 6/08 of November 23, 2011 published on January 25, 2012

Schlagwörter

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