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Lower taxi VAT rate only justified if noticeable difference in the service

The ECJ has held that a lower VAT rate for taxis is only justified if there is a – for the customer – noticeable difference in the service.

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The VAT Directive allows member states to charge VAT at a reduced rate for the “transport of passengers and their accompanying baggage”. German law partially transposes this with a reduced rate provision for public transport within a local community or over distances of up to 50 km. It defines public transport as trains, busses, ferries and taxis. Taxis are the vehicles registered as such and subject to local and federal rules. Two cases came before the ECJ on the privilege for taxis over other arrangements for the transport of passengers by car. Both were brought by non-taxi providers claiming an unfair, competition distorting advantage for taxis to their own detriment. The taxi reply was to call upon the obligations on taxi drivers as a condition for their licence, in particular, the obligation to accept all fares and the requirement for a standard charge as shown by the metre. As against this they also had the privilege of picking up fares off the street and of accepting orders through the city net. They also enjoyed certain privileges on the road, such as the right to use the bus lane at intersections, thus enhancing the value of their service to the rush-hour customer.

The first taxpayer operated a transport service for the unwell, essentially paid for by the health service under a negotiated contract. Taxi firms were also invited to tender for the same agreement. The rates payable were well below the standard fares, whilst ordering was always in advance. The transport service company claimed the lower, taxi rate of VAT to place it at an unfair disadvantage, since this was in the circumstances the only distinction between the two service providers that mattered to the consumer or health service. The second case was brought by a local transport operator claiming that for standardised customer services (such as school children) there was no difference in service level, whilst for callers the only noticeable difference was the phone number. Fares “off the street” were a rarity in modern times. Both plaintiffs lost their cases before the German regional tax courts on the basis of the clear wording of the VAT Act. However, the Supreme Tax Court harbours doubts as to whether the apparent taxi drivers’ privilege is in accordance with community law, particularly with the principle of tax neutrality.

The ECJ has now held that a taxi privilege can only be justified where there is a – for the customer – noticeable difference in service level. This was fairly obviously not the case with respect to the medical transport service, and may well have been not the case for the local transport company. In both instances it was for the national courts to examine the circumstances.

The ECJ joined case references are C-454/12 *Pro Med* (medical transport) and c-455/12 *Pongratz* (transport operator) judgment of February 27, 2014.

Schlagwörter

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