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Hotel meals in a package are ancillary to the accommodation

The Supreme Tax Court has held that hotel meals provided as part of a package are ancillary to the main service of an hotel of providing accommodation. Full-board and half-board packages are therefore taxable as accommodation.

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A travel organiser arranged full and half-board accommodation packages with hotels abroad which it sold to a local bus (coach) company. It argued that the meals offered with the package (breakfast and evening meal and, in some cases, lunch) were ancillary to the main hotel service of providing accommodation and were therefore taxable as part of that main service, i.e. in the country in which the hotel was located. The tax office countered that the meals were a separate service, taxable in this case in Germany as having been sold to a German business.

The Supreme Tax Court has followed its own previous case law (and also an ECJ case) and held the meals at issue to be ancillary to the main service of providing accommodation. The entire amount charged to the bus company was thus taxable abroad. For the court an ancillary service was subordinate to the main service in the sense that it enabled the customer to obtain the optimal benefit from that main service. For this, it was not necessary that it should be impossible to enjoy an ancillary service on its own (the tax office' argument), but rather that the ancillary service should be seen as secondary by the average consumer. This was the case here with hotel accommodation packages. The customer paid a single amount, restaurant services were typically provided by hoteliers and the amount – about 12.5% of the full/half-board package – was not sufficient to make the subsistence appear as a separate service in its own right.

Supreme Tax Court judgment V R 25/11 of March 3, 2014 published on June 11

Note: this case may have wider implications than might at first sight appear. The arguments concerning the ancillary nature of the meals presented in a dispute on the place of taxation would also seem to apply to questions on the rate of tax to be charged on domestic travel. In Germany restaurant services are taxed at the 19% standard rate whilst only the reduced rate (7%) is due on hotel accommodation. The tax authorities are insistent that businesses separate the two – the hotels when paying VAT and other businesses when deducting the input tax on the business travel of their employees – when the meals are not charged separately (bed and breakfast being a not unusual package). Whether they will change their attitude in the light of this case remains to be seen.

Schlagwörter

accommodation, ancillary service, hotel meals