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By PwC Deutschland | 26. Mai 2020

Supermarket discount model "Membership" is subject to the standard tax rate VAT

In its judgment of 18 December 2019 (XI R 21/18) published on 22 May 2020, the Supreme Tax Court ruled that the granting of a right to purchase goods at a reduced price (in the form of a "membership") constitutes an independent service for VAT purposes and not just a service ancillary to the subsequent sale of goods.

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Even if the supermarket sells goods that are subject to both the standard tax rate (19%) and the reduced tax rate (7%), the standard tax rate is to be applied to the membership fee.

In 2010, the appellant operated several organic supermarkets in a major German city under a common umbrella brand. In the stores, customers could either buy the goods at the normal price or at a reduced price as a "member". For the "membership", customers paid a fixed monthly fee (depending on income and marital status of between approximately € 10 and € 20).

The appellant assumed that the membership fee was a consideration for the subsequent sale of goods arguing that the granting of the right to a discount should be regarded as a necessary intermediate step in the supply of goods and thus as an ancillary service. Since more than 81% of the discounted goods supplied were subject to the reduced tax rate (e.g. for food sales), the appellant had divided the membership fees in a ratio corresponding to both tax rates. The tax office and the tax court, on the other hand, assumed that the right to a discount was a separate independent service subject to the standard tax rate.

The Supreme Tax Court confirmed the view of the tax office and the tax court. Insofar as a payment was made for the appellant's offer to supply goods at a reduced price, the appellant had provided an independent service in which the customers had a special interest. In particular, a monthly flat-rate membership fee was not a down payment for future supplies of goods, as the "whether and how" of future supplies was not sufficiently determined when the "membership" was concluded.

Economically the Supreme Tax Court's ruling gives rise to an increase in the supermarket-operator's costs for any discount models offered. The consumer is not directly affected. The Supreme Tax Court did not make any comments on other discount models in which, for example, the membership fee depends on the customer's turnover or is offset against the purchase price of the goods. Nor did the Supreme Tax Court have to decide whether the case would have had to be assessed differently if the discount had only applied to goods subject to the reduced tax rate of 7%.

Source:

Judgment of the XI Senate of 18.12.2019 - XI R 21/18 - published on 22 May 2020

Schlagwörter

VAT rates, discount models, membership