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By PwC Deutschland | 09. Mai 2025

ECJ: Lump-sum compensation to cover losses of public transport not subject to VAT

In a most recent decision and following a request for a preliminary ruling from the Supreme Administrative Court in Poland, the European Court of Justice addressed the question of how the subsidy of a taxable person by a local authority acting in the public interest (here: the provision of public transport) is treated for VAT purposes. In the case at hand the court decided that such compensation has no direct effect on the price of the transport services provided, the purpose of that compensation being above all to cover the losses linked to that activity.

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Background

The present case relates to an advance ruling given by the Polish tax authority. The collective public transport services by P., who is active in the field of passenger transport, are to be provided on the basis of a contract concluded between a local authority, who will act as an organizer and set the price of tickets, and P., acting as an operator. Since the revenue generated, notably by the sale of tickets, will not suffice to cover the costs of those services, the local authority will pay P. compensation at a flat rate, the amount of which cannot exceed the shortfall stemming from those services and, in any case, a maximum amount fixed for a given period. According to P., the compensation does not increase the taxable amount because it does not have a direct effect on the price of the services supplied but constitutes a contribution to all the costs of the planned activity. In its advance tax ruling the local tax authority expressed an opinion contrary to that view.

Decision

The ECJ held that compensation for financial losses, the amount of which is not based on the number of users, but on the vehicle-kilometers offered by reference to a flat rate, does not constitute consideration for a supply of services to the local authority making the payment. Nor does such compensation constitute consideration from a third party for the benefit of specific users of public transport because it does not affect directly, but leastways indirectly, the price calculation made by the subsidized undertaking.

The compensation such as that at issue in the main proceedings is not specifically paid to the operator in order to carry out a transport service for a particular recipient and has no influence on the price to be paid by that customer, since that price is not fixed in such a way that it diminishes in proportion to the compensation paid to the provider of that service. By contrast, it is granted ex post and is independent of the actual use of the transport services but depends on the number of vehicle-kilometers offered. Therefore, such compensation is not covered by the concept of ‘subsidies directly linked to the price’ within the meaning of Article 73 of the VAT Directive.

In that context, the referring court also asked, in essence, whether the compensation must be regarded as consideration obtained from a third party, within the meaning of Article 73. The situation at issue in the main proceedings and that giving rise to the judgment of 27 March 2014, *Le Rayon d’Or* (**C?151/13**), where the ECJ held that there was a direct link between the supply of services by such an establishment to its residents and the consideration received, namely that ‘healthcare lump sum’, with the result that such a lump sum payment constituted consideration for the healthcare services provided for consideration by that establishment to its residents and, on that basis, are not comparable. There was a direct link between the healthcare services provided to the residents of the residential care home for the elderly and the financial consideration paid to that establishment, determined based on the care received and the number of residents concerned. In the present case, however, collective public transport services benefit not clearly identifiable individuals, but all potential passengers. In addition,

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the compensation is calculated without considering the identity and number of users of the transport service**.**

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ECJ judgment of 8 May 2025 **C-615/23** - *Dyrektor Krajowej Informacji Skarbowej (Services de transport public)*.

Schlagwörter

Public Services, local public transport