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By PwC Deutschland | 10. April 2026

VAT: Place of supply of services in the context of the parent company and its branch

The Supreme Tax Court had to determine the place of supply of advertising services for the purpose of input VAT deduction by a company based abroad that has a permanent establishment in Germany. The starting point was the question whether the services were provided for and used by the latter. This was answered by the Supreme Tax Court in the negative.

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Background

The plaintiff, a company based in Mauritius, operated hotels in several third countries. In Germany, it maintained a liaison office whose responsibilities, among others, included negotiating contractual agreements with German tour operators.

The tax office and the lower tax court disallowed the input VAT deduction for the advertising services purchased by the plaintiff because these services could not be attributed to its domestic permanent establishment and were therefore not taxable in Germany under Section 3a (2) Sentence 2 VAT Act. The advertising commissioned by the plaintiff's domestic liaison office, which was intended to increase bookings of accommodations at the hotels and resorts operated by the plaintiff, was not attributable to and used for the purposes of the domestic office (by generating its own sales) but to its head office in the third country since the travel bookings were made there.

Decision

The Supreme Tax Court agreed and dismissed the plaintiff's appeal.

The claim for input VAT deduction of the plaintiff does not exist. The place of supply of an advertising service falling under Section 3a (2) VAT Act is not in Germany even though the service is commissioned by a domestic liaison office of the recipient of the services whose place of business is in a third country. The services were not provided and used for the needs of that domestic liaison office but rather for the business activities at the recipient's place of business in the third country.

According to Section 3a (2) VAT Act, a supply of services, which is carried out to a taxable person for his business, shall be carried out where the customer has his place of business, subject to paragraph 3 to 7 and Sections 3b, 3e and 3f. If, however, the supply of services is carried out for a fixed establishment of the customer, the place of supply is where the fixed establishment is located (…).

The advertising services commissioned by the domestic liaison office were neither provided for its own purposes nor used by it and were intended to increase bookings for accommodation at the hotels and resorts operated by the plaintiff and located in the territory of a third country whereby the travel

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bookings were not made by the plaintiff’s domestic liaison office but rather exclusively at the place of its economic activity in the third country.

It would be contrary to the principles for determination of the place of supply of services set out in Section 3a (2) VAT Act and Article 44 of the VAT Directive to treat a service as having been supplied at the place of a permanent establishment (fixed place of business) if - as in the present case - it merely purchases services for the head office where the economic activity is carried out because that is also where the consumption of the service occurred.

Source:

Supreme Tax Court, judgment of 4 December 2025 (V R 37/23) published on 9 April 2026.

Schlagwörter

Place of supply of services, permanent establishment (PE)