By PwC Deutschland | 14. August 2026

CJEU Referral: Is an Austrian company’s drying plant a permanent establishment for VAT purposes?

In a recently published ruling, the Supreme Tax Court has referred a question to the Court of Justice of the European Union (CJEU) for a preliminary ruling on whether a remotely controlled technical drying plant located in Germany constitutes a ‘fixed establishment’ within the meaning of the VAT System Directive, where the operator does not employ its own staff and subcontractors are instead working on site.

The question referred for a preliminary ruling:

Does a plant (in this case: a sewage sludge drying plant) which is involved in the provision of a service (in this case: a waste disposal service), constitute a fixed establishment within the meaning of Article 192a of the VAT System Directive, in terms of the requirement for personnel and technical equipment, where a taxable person whose place of business is in another Member State remotely monitors and maintains the plant situated in Germany from its place of business in Austria and, for the operation of that plant, otherwise engages a subcontractor whose staff carry out work at the plant?

The consequences:

The existence of a VAT-related permanent establishment of the Austrian company in Germany would mean that the tax liability would not, for that reason, pass to the German municipality as the recipient of the supply. According to the Supreme Tax Court, if the question referred for a preliminary ruling is to be answered in the negative, the claim must be dismissed, at least in respect of part of the years in dispute from 2015 to 2020, subject to the question of whether the limitation period for assessment has expired for the years in dispute.

Background:

In contrast to the concept of a permanent establishment as defined in Section 12 of the German Fiscal Code, from a VAT perspective, the existence of a fixed establishment requires ‘staffing’ that enables the relevant services to be provided independently (see: CJEU, judgment *Planzer Luxembourg* of 28 June 2007 – C-73/06, para. 54) . In addition to the wording of Article 11(2) and Article 53(1) of the VAT Implementation Regulation (EU) No 282/2011, the CJEU judgment in Titanium of 3 June 2021 – C-931/19 supports the view that staffing is a mandatory requirement.

In the case in question, the Supreme Tax Court considers the existence of a permanent establishment for VAT purposes to be doubtful, inter alia, because the sewage sludge drying plant operated largely automatically and a subcontractor was engaged to carry out the additional work required. The existence of a fixed establishment might require that fixed establishment itself be capable of providing the services (such as, in the case in question, the waste disposal service, which involved more than just drying) autonomously and, therefore, in their entirety.

In the case, the waste disposal service was provided using a plant that operated largely automatically and, as it had no staff of its own, generally required only occasional and minimal manpower from a contracted subcontractor to load it. Furthermore, the plant was both remotely monitored and remotely maintained from the economic centre of the service providers in Austria.

All key decisions concerning the operation of the plant were therefore reserved for the plant operators.

BUT: According to the Supreme Tax Court, this view could be regarded as questionable in light of technological developments. If human labour is increasingly being replaced by machines, it might no longer be considered appropriate to distinguish between the use of personnel and the use of machinery.

Consequently, the aforementioned CJEU judgement in Titanium could be interpreted to mean that every provision of services is based on a decision to provide the service – such as the decision to let facilities – and that a fixed establishment can only be deemed to exist if the decision to provide the service is taken by human resources working at the facility.

However, doubts regarding the requirement for a staff presence may also arise from the fact that, when determining a fixed establishment for the purposes of Article 44, second sentence, of the VAT Directive, this secondary connecting factor is to be taken into account only if the connection to the registered office does not lead to a tax-efficient solution or results in a conflict with another Member State.

Source:

The Supreme Tax Court's referral to the CJEU dated 7 May 2026 (V R 12/24), published on 13 August 2026.

Schlagwörter

VAT, permanent establishment (PE)