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By PwC Deutschland | 27 June 2012

VAT on travel agency discount

The Supreme Tax Court has asked the ECJ to rule on the effects of a discount offered by a travel agency to its customers on its taxable commission paid by tour operators, hotels and other service providers.

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A travel agency sold package tours, hotel accommodation, transport and other tourist services to the public in return for a commission paid by the providers. It offered customers a share in its commission – as a discount off the end price payable – as an inducement to ignore competitors, and claimed the discount allowed as a reduction of its taxable turnover, that is, of its commission received. The tax office only allowed the claim to the extent the corresponding turnover of the tour operators and other service providers was subject to German VAT. The Supreme Tax Court has asked the ECJ to rule on the matter from the point of view of the Sixth (now, the VAT) Directive in the light of its judgment of October 24, 1996 on case C-317/94 *Elida Gibbs*, called upon by both parties in the present case as supporting their respective points of view.

In *Elida Gibbs*, the ECJ held that a manufacturer reduced its taxable turnover with the discounts given to consumers purchasing its products and claimed with cut-out coupons and similar vouchers distributed to the public in magazine advertisements, bulk mailings and other forms of unspecified address. This applied regardless of the actual mechanism of the discount grant – directly through the retailer on presentation of a coupon by the consumer at the time of purchase, or in the form of a subsequent refund to the customer on submission of a coupon together with proof of purchase. Since in either case the discount was ultimately borne by the manufacturer, allowing him to deducted it from his turnover preserved the neutrality of the system by ensuring that the net tax ultimately collected is the same as that paid by the consumer. This is the point made by the travel agency in the present case.

The contrasting point of view proposed by the tax office sees *Elida Gibbs* as a transaction chain of items taxed at the same rate. The travel agency, however, taxes its turnover (commission received) at the standard rate as a German service, whereas the providers fall under different schemes depending upon their status as German or foreign tour operators (margin scheme) or as service providers direct (hotels and transport). The neutrality of the system would, in the view of the tax office only be preserved if the taxable turnover of the travel agency were to be reduced by the discount in the proportion to which the underlying turnover is, itself taxable.

The Supreme Tax Court has not voiced its own view, but has offered the variation that *Elida Gibbs* might not applicable to a travel agent at all in view of the margin scheme applicable to its suppliers. In that case, the agency in question would have no claim to reduction of its taxable turnover from its discounts granted, regardless of the services it sold.

Supreme Tax Court decision V R 18/11 of April 26, 2012 published on June 27

Keywords

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