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By PwC Deutschland | 21 October 2015

Local tourism taxes constitutional

The Supreme Tax Court has rejected claims that the local tourism taxes on overnight stays in Bremen and Hamburg are unconstitutional.

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Many local authorities levy tourist taxes on hotels and other establishments offering overnight accommodation to tourists. The Supreme Tax Court has now held in two cases that these taxes (in Bremen and in Hamburg) are in accordance with the constitution. In both cases, the tax is levied on the length of stay at fixed rates (€2 per head and night in Bremen; €1 for each €50 of the overnight charge in Hamburg, again per head and night). Again in both cases there are a number of exemptions, including business travel. In Bremen business travel is demonstrated by addressing the hotel bill to the business or company, and in Hamburg by “appropriate vouchers”. An employer’s certificate is an example of an appropriate voucher.

Fundamentally, the constitutional complaints were based on two contentions: that the local tax duplicated the federal tax of VAT and that the business travel exemption made actual collection of the tax too uncertain for it to be seen as anything other than arbitrary. The Supreme Tax Court has now rejected both contentions. In the view of the court, the local tax does not duplicate VAT as it is levied at a fixed amount (Bremen) or on a fixed scale (Hamburg) on a specific item – accommodation for tourists – as opposed to a set rate on the total charge for all supplies of any description other than those explicitly exempt. It is also levied as a single-phase tax as opposed to the multi-phase VAT. The claim that collection was uncertain was based on the unsupported assertion that tourists were able to avoid the tax at will by telling the hotel staff that they that they were in the town on business. However, the court pointed in both cases to the necessity for documentary evidence and to the rights of the city authorities to make spot checks and take other steps to ensure control.

Supreme Tax Court judgments II R 32/14 (Bremen) and II R 33/14 (Hamburg) of July 15, 2015 published on October 21

Keywords

accommodation, overnight, tourism tax