Downloaded from Blogs on 23.11.2026 04:09

By PwC Deutschland | 12 October 2017

VAT: Referrals to European Court of Justice on imputed taxation (“Sollbesteuerung”) and margin-scheme taxation.

Supreme Tax Court judges have expressed doubt both upon the previously uncontested obligation of entrepreneurs subject to the so-called imputed taxation (“Sollbesteuerung) to pre-finance VAT and upon the exclusion of the reduced VAT rate on the provision of holiday apartment rentals according to the so-called margin-scheme taxation. The Supreme Tax Court has therefore referred two cases to the European Court of Justice (ECJ) (i) referral of 21 June 2017: V R 51/16; and (ii) referral of 3 August 2017: V R 60/16.

Downloaded from Blogs on 23.11.2026 04:09

The first case (21 June 2017: V R 51/16) relates to a plaintiff, who worked as an agent for professional football players. She was subject to the imputed taxation procedure, according to which the entrepreneur is obliged to pay over the VAT as soon as the service is supplied regardless of whether the related remuneration has been received. The plaintiff earned provisions from the various football clubs for procuring a professional players; the provision was actually only paid after the player had signed the employment contract and received a playing permit from the German Football Association (the “DFL” as licensor). The provision was paid in instalments based on the length of the employment contract. The due dates of the provision instalments and the right to claim them were conditional upon the continuing existence of the contract between the player and the club. The tax authorities considered that the plaintiff was obliged to pay the VAT on the full provision in 2012 when the agency service had been provided, even though she could contractually only claim parts of the provision from the clubs in 2015.

Doubt expressed about the usual tax procedure

The approach of the tax authorities reflects a tax procedure which has been practised for decades. The Supreme Tax Court has now raised doubts about whether this approach is compatible with the binding provisions of European law set out in the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The question referred to the ECJ is whether the taxpayer is obliged to pre-finance the VAT due on the services provided for a period of 2 years, where he can(partially)only receive the remuneration for the services 2 years after the chargeable event.

The referral is also relevant to instalment purchases and leasing arrangements

The questions referred to the ECJ have significant importance for the practice. At first sight they relate to certain claims for remuneration but they can also have significance for fixed-term payment claims such as instalment purchases in retail or for leasing arrangements. Here too according to the current practice a taxpayer subject to imputed taxation is obliged pay the tax on the supply of the goods as soon as the goods have been handed over. Following the hitherto existing practice this even applies where the taxpayer will only be able to receive the individual instalment payments over a period of a number of years.

Holiday apartments

In the second case (3 August 2017: V R 60/16) the ECJ has been asked to decide whether it continues to follow its previous decision, according to which the rental of holiday apartments by a travel agency on its own behalf (and not as an agent) is subject to margin-scheme taxation and whether – in the case of an affirmative answer – the margin is to be taxed at the reduced rate applicable to accommodation in holiday homes.

Sources:

Referrals of 21 June 2017 (V R 51/16) and 3 August 2017 (V R 60/16) published on 20 September 2017

Downloaded from Blogs on 23.11.2026 04:09

Keywords

Holiday accomodation, Leasing, Margin-scheme taxation, VAT