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Referral to European Court of Justice: VAT exemption for the development and brokerage of insurance products

Does an insurance broker, who makes- in addition to his brokerage activities -a brokered insurance product available to an insurance company, provide VAT-exempt services? The Supreme Tax Court considered this doubtful and decided on 5 September 2019 (V R 58/17), to refer the question to the Court of Justice of the European Union (ECJ) for a preliminary ruling.

Background

The appellant had developed an insurance product through which ships and their crews could be insured against piracy while passing through the Gulf of Aden. He granted a licence to use that insurance product to an insurance company. In addition, he brokered these insurances and provided other services in connection with the execution of the insurance contracts, such as services related to the settlement of claims.

The tax office assumed that these services did not constitute a single supply but rather three separate supplies. Following a binding ruling, only the direct activity of insurance brokerage was a VAT exempt supply according to Section 4 No. 11 of the VAT Act (VATA). The licensing of the insurance product was subject to the reduced VAT rate pursuant to Section 12 (2) No. 7 Letter c VATA, while the standard tax rate was to be applied to the other services in connection with the execution of the contract, including the services related to the settlement of claims. For this reason, the tax office treated 25% of the total remuneration for licensing as subject to the reduced tax rate and 8% of the total remuneration for administrative services as subject to the standard tax rate. The appellant took the view that the VAT exemption should be applied to the full amount. The action before the tax court was unsuccessful, as it took the view that the appellant was providing a single supply which was subject to VAT in its entirety.

Decision

The Supreme Tax Court also took the view that the services constituted a single supply. The Supreme Tax Court was not, however, clear as to the correct interpretation of the legal elements which give rise to a VAT exemption under EU law in relation to insurance brokerage. Pursuant to Article 135(1)(a) of Directive 2006/112/EC (VAT Directive), insurance and reinsurance transactions, including the associated services provided by insurance brokers and agents, are VAT exempt. The ECJ should clarify whether a single supply consisting of insurance brokerage, the granting of a licence to provide an insurance product and other services for the execution of a contract, including claims settlement, is VAT exempt overall, although only an ancillary service (insurance brokerage) would be VAT exempt if viewed independently.

Source:

Decision of Supreme Tax Court on 5 September 2019 (V R 58/17), published on 12 December 2019

Keywords

VAT Exemption, insurance broking, single supply of services