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By PwC Deutschland | 08 July 2021

VAT: No permanent establishment in case of property rental

The European Court of Justice (ECJ) ruled that the reverse charge is applicable to the leasing of real property located in Austria because the Jersey based lessor, in lieu of own local staff to perform services relating to the letting, does not have a permanent establishment (fixed place of business) in Austria.

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Background

During the tax years 2009 and 2010 Titanium, a company with its registered office and management in Jersey, let its Austrian property to two Austrian traders. In order to carry out those transactions, which were Titanium's only activities in Austria, Titanium appointed an Austrian real estate management company to act as intermediary between the service providers and suppliers, to invoice rental payments and operating costs, to maintain business records and to prepare the VAT declaration data. Those services were carried out by the agent in third-party premises. Titanium applied the reverse charge (i. e. transfer of the VAT liability to the lessees) and took the view that it was not liable to pay VAT in respect of its activity of letting the property, on the ground that it did not have a permanent establishment in Austria. The tax authority refused and held, that a property which was rented always constituted a permanent establishment and, in consequence, assessed the VAT payable by Titanium for the tax years 2009 and 2010.

Decision

In its decision the ECJ made it clear that the lased property in the case at hand does not constitute a permanent establishment for VAT purposes. With this the ECJ rejects the view previously held by the local tax authorities that a leased property *always* constitutes a fixed establishment or a permanent establishment for VAT. Rather, the assumption of a fixed establishment requires that the lessor / owner has its own personnel and technical facilities which puts him in a position to actually provide the rental service in question.

The existence of a "*fixed establishment*" implies a minimum degree of stability derived from the permanent presence of both human and technical resources necessary for the provision of services. It thus requires a sufficient degree of consistency and persistence and a structure adequate, in terms of human and technical resources, to supply the services in question independently. A property that does not have any personnel resources cannot fulfill the criteria set by ECJ in its case law to qualify as a fixed place of business. Third party service providers were engaged to perform certain tasks, whilst Titanium itself retained the right to make all major decisions regarding the lease.

Summary: As there is no local fixed establishment involved in the provision of the rental service, the reverse charge mechanism (transfer of the VAT liability to the lessees) must be applied. The reverse charge generally applies if the tenant is an entrepreneur / business (as in the case of dispute)), a legal person with a VAT ID-Number or a corporation under public law.

Source:

The ECJ case reference is **C?931/19** *Titanium Ltd* judgment of 3 June 2021.

Keywords

fixed place of business, permanent establishment (PE), property rental, reverse charge