

By PwC Deutschland | 23 August 2021

Update: VAT - Place of performance of educational or similar courses

The Federal Tax Office, by way of a circular, has adjusted its VAT Application Ordinance with regard to the 2019 ruling by the European Court of Justice on the determination of the place of supply of services in connection to the admission to educational events.

Background

According to **Article 53 of the VAT Directive 2006/112** the place of supply of services in respect of the admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions, and of ancillary services related to the admission, supplied to a taxable person, shall be the place where those events actually take place.

In its judgment of 13 March 2019 and pursuant to a request for a preliminary ruling in a Swedish case the European Court of Justice (ECJ) dealt with the question of the place of supply of services in connection with a five-day course on accountancy and management which took place in another Member State outside Sweden and where the participants were taxable persons with their business or fixed establishment in Sweden. The ECJ ruled that the place of performance of the service in the case referred is where the event actually takes place (which could also be outside Sweden under certain circumstances) and not, as regulated in Art. 44 of the VAT Directive, at the registered office of the recipient of the service (in this case, therefore, always in Sweden), provided registration and payment are made in advance (ECJ judgment of 13 March 2019 (case: **C-647/17**, *Srf konsulterna AB*).

German VAT law

Article 53 of the VAT Directive was implemented in § 3a para. 3 no. 5 of the German VAT Act. The application of the local regulation for events in science and education requires that the event is generally accessible for the public. As determined by the ECJ in the case *Srf konsulterna AB*, however, this latter condition is not required when determining the place of service under Article 53.

Tax administration accepts guidelines set by ECJ

In its circular the Federal Finance Ministry accepts and transposes the above parameter set by the ECJ (i. e. it is no longer required that the event be generally accessible for the public) into its VAT Application Ordinance. In addition, the VAT Application Ordinance was amended insofar as the physical presence of the persons at the event is required. This would exclude online participation which is therefore expressly excluded from the scope of Section 3a (3) no. 5 VAT Act. The tax administration points out that this is in line with the opinion of the Advocate General in the case and which the ECJ followed in its decision of 13 March 2019. The AG did point out that an event should be construed as a gathering of persons to observe or participate in an activity over a period of time. It therefore only covers activities which involve the physical presence of the customer.

Update (23 August 2021)

According to the original intention of the government (as issued in the circular from the Federal Finance Ministry dated 9 June 2021), the new principles were to be applied in all open cases. In the aftermath, however, the Federal Finance Ministry found that implementation with immediate effect is not possible in practice. In a most current circular of 19 August 2021, a period of grace is therefore provided in order to give companies sufficient time to adjust to the amendment: For services provided prior to 1 January 2022 the

place of service may therefore still be determined based on the VAT regulations in force until 8 June 2021.

Source:

Federal Ministry of Finance circular dated 9 June 2021, – III C 3 - S 7117-b/20/10002 :002

The **German download of the circular** can be found here.

Keywords

Place of supply of services, educational course, educational events