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VAT: Place of supply for boat excursions on the river Moselle

The European Court of Justice (ECJ) was asked on the Value Added Tax (VAT) treatment of tourist navigation services on the stretch of the river Moselle over which both Germany and Luxembourg exercise joint sovereignty. The Luxembourg tax authorities issued VAT assessments to the Luxembourg tour operator as regards its transport services on the river Moselle. In conclusion, the ECJ noted that these services are subject to VAT in any case and the taxation by Luxembourg prevented Germany from imposing VAT.

Background

Navitours provides tourist navigation services on the stretch of the Moselle over which both Germany and Luxembourg exercise their joint sovereignty under Article 1 of the Treaty of 19 December 1984 on the demarcation of the joint border between those two States (known as the "German-Luxembourg Condominium"). The case of dispute took its course with the purchase of the ship by *Navitours* in 2004. *Navitours* acquired the passenger ship in the Netherlands for the purpose of its transport business. This ship was subjected by the tax authorities to the rules on intra-community supply, i.e., the supply was exempt from tax in the Netherlands and taxed in Luxembourg. The Luxembourg tax authorities refused the deduction of input VAT on the grounds that, in the absence of taxation of the activity of this company taking place on the condominium waters, the vessel had not been acquired for the purposes of taxable outputs. *Navitours* had, for many years, been regarded by the Luxembourg Tax Authority as falling outside the scope of VAT, with the result that the Luxembourg Tax Authority had not sought the payment of VAT on the sale of passenger transport tickets by *Navitours*. A court later held that the activities of this company could be taxed either in Luxembourg or in Germany, so that it was entitled to deduct input tax. In August 2015, Luxembourg tax authority issued tax notices relating to *Navitours*' turnover for the years 2004 and 2005, and by which the transport services carried out were subject to VAT. *Navitours* appealed the VAT assessments and in the end the case was brought to the attention of the ECJ.

ECJ: *Navitours*' services potentially subject to VAT

The ECJ held that the absence of an agreement on the collection of VAT between Germany and Luxembourg in respect of the "German-Luxembourg Condominium" cannot preclude the taxation of services performed within that condominium. During the proceedings before the ECJ the German Government had argued that the Sixth Directive does not preclude the Member States concerned from temporarily waiving VAT. However, this view was not shared by the ECJ: To accept these arguments would allow Member States to establish a territory in which the services supplied there would escape any levying of VAT even though the Member States concerned consider that territory to be within the meaning of EU VAT law. To accept that line of argument would also infringe the principle of fiscal neutrality.

A Member State must tax passenger transport performed by a service transport provider established in a Member State (here: Luxembourg) which constitutes a joint territory under joint sovereignty of those two Member states, provided those services have not already been taxed by the other Member State. Thus, the taxation of *Navitours*' services by Luxembourg prevents the other Member State (Germany) from taxing them in turn. Without giving prejudice to this, the two Member States may otherwise regulate and manage the taxation of services supplied in this territory, provided that non-taxation and double taxation are avoided.

Source:

The ECJ case reference is [C?294/21](#) *Navitours* judgment of 1 August 2022.

Keywords

boat tours, place of taxation