

By PwC Deutschland | 30 August 2022

Reduced VAT rate for supplies of wood only if EU principle of neutrality is observed

A Member State which provides for a reduced tax rate for supplies of firewood according to Article 122 of the VAT Directive may limit its scope to certain categories of supplies of firewood based on the combined nomenclature, provided that the principle of fiscal neutrality is observed. With this decision the European Court of Justice answered a request for a preliminary ruling by the Supreme Tax Court. The latter has now issued its final judgment in the case referred.

Background

The case of dispute concerns the application of the reduced rate of VAT on supplies of wood chips. During 2015, the appellant supplied forest and industrial wood chips to municipality A and to parish B. During that period, he also supplied wood chips as fuel, under an agreement concluded with municipality C concerning the 'operation of a wood chip heating installation including maintenance and cleaning'. The tax office applied the standard VAT rate of 19% for deliveries to A, B and C. The appellant challenged that approach before the Munich Tax Court, and the court partially ruled in favor of the appellant. It held that the supplies of wood chips to municipality A and parish B be subject to the reduced rate, but that the package of services supplied to municipality C must be taxed at the standard rate, since it constituted a single overall supply. In the list of goods subject to the reduced VAT rate, No. 48 of Annex 2 to the German VAT Act only firewood is explicitly listed.

ECJ referral

The Supreme Tax Court had asked the ECJ to clarify the concept of 'wood for use as firewood' in Article 122 of the VAT Directive, in particular as to whether that concept encompasses wood chips. Furthermore, and supposing that Member States are empowered to establish the precise scope of the reduced rate of VAT for supplies of wood for use as firewood by means of the Combined Nomenclature ('the CN'), the referring Supreme Tax Court sought clarification as to whether the principle of fiscal neutrality precludes the application of different rates of tax to different types of wood for use as firewood.

ECJ decision

First and foremost, the ECJ set out to clarify that the concept of wood for use as firewood, within the meaning of that article, designates any wood which, based on its objective properties, is intended exclusively for burning.

As regards the application of the reduced VAT rate the ECJ noted that it is for Member States to make limited and therefore selective use of the option granted to them by Article 122 of the VAT Directive to precisely establish the supplies of wood for use as firewood to which they choose to grant the benefit of a reduced rate.

The option in Article 122 of the VAT Directive to reserve the benefit of a reduced rate to only specific supplies of wood for use as firewood is subject to compliance with the principle of fiscal neutrality. Under this principle it is precluded to treat similar goods or supplies of services, which are thus in competition with each other, differently for VAT purposes. From a practical point of view, it is necessary to determine whether the goods and services at issue are interchangeable from the point of view of an average consumer. That being the case, certain forms of firewood may not be excluded from the reduced VAT rate because the application of different VAT rates might affect the consumer's choice which, in turn, would indicate an infringement of the principle of fiscal neutrality. It is a matter for the referring court to determine whether wood chips are replaceable or interchangeable with other types of wood for use as firewood from the point of view of an average consumer.

Follow-up decision of the Supreme Tax Court

The Supreme Tax Court ruled in favor of the appellant. The interchangeability of the wood chips with the firewood, thus fulfilling the customs tariff condition, is satisfied here, since a consumer is primarily concerned with the respective calorific value of the wood and thus with the similar content of the various forms of firewood.

In the wake of the above ECJ judgment the Supreme Tax Court no longer adheres to its previous case law, under which the customs tariff classification took precedence over the principle of neutrality.

Sources:

ECJ, judgment of 3 February 2022, case: C-515/20 *Finanzamt A*

Supreme Tax Court, decision of 21 April 2022, case ref. V R 2/22 (V R 6/18) published on 14 July 2022.

Keywords

reduced rate VAT