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By PwC Deutschland | 13 March 2023

Rental of movable living containers subject to reduced VAT rate

The reduced Value Added Tax (VAT) rate does not only apply to the rental of land and the buildings fixed to it, but also in general to the rental of living and sleeping quarters by an entrepreneur for the short-term accommodation of strangers. According to the Supreme Tax Court this also includes the renting of non-stationary living containers to harvesters (seasonal workers).

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Background

The plaintiff operates a farm with a focus on asparagus and berry cultivation. In the tax periods 2014 to 2017 (years in dispute), he employed around 100 harvest workers on a seasonal basis, to whom he rented rooms in residential containers. The containers had only three sleeping berths; sanitary facilities and a central kitchen facility were available in the plaintiff's hall for the harvest workers accommodated there. The living containers were not embedded in the ground but stood on stone footings and were accessible via paved paths.

The plaintiff declared his sales from renting out the rooms to harvest workers for the years in dispute at the reduced VAT rate. The tax office believed the sales in question were subject to the standard tax rate because the accommodation did not have a permanent fixed connection to the land. The Regional Tax Court, however, granted the claim as it saw no reason to conclude that the living and sleeping quarters must be part of a building.

Decision

The Supreme Tax Court rejected the tax office's appeal.

The rentals charged by the plaintiff are subject to VAT at the reduced rate pursuant to Section 12 (2) No. 11 Sentence 1 VAT Act, which states that the reduced VAT rate applies to (…) “*the leasing of living space and bedrooms that a taxable person keeps ready for short-term accommodation of guests, as well as the short-term leasing of camping sites*”.

The Supreme Tax Court held that this also includes the rental of living and sleeping quarters in non-fixed residential containers. Although it cannot directly be inferred itself from the wording of Section 12 (2) No. 11 Sentence 1 VAT Act, the court is nevertheless convinced that the provision generally favors the rental of living and sleeping quarters by an entrepreneur for the short-term accommodation of strangers.

This is in also accordance with Union law, specifically with Annex III No. 12 of the VAT Directive. Annex III provides a list of supplies of goods and services to which the reduced rates (...) may be applied. The term "accommodation" used in Annex III No. 12 (reduced rate for “accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites”) must be interpreted in a strict sense and the scope of application of this provision may not be extended to services that are neither included in the wording of the provision nor are inherent in the term itself. However, the Supreme Tax Court considers the definition of "accommodation in hotels and similar establishments" used therein to be sufficiently broad to include the short-term accommodation of seasonal workers in mobile accommodation containers.

The intention of the EU legislators in Annex III to the VAT Directive was to ensure that a reduced rate of VAT be applied to basic goods and to goods and services which serve social or cultural purposes, in so far as they present little or no risk for unfair competition. The option in Annex III No. 12 VAT Directive allows Member States to apply a reduced VAT rate to various forms of accommodation to facilitate broad access to

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the services in question, thus meeting a fundamental need of everyone who travels (ECJ, judgment of 19 December 2019, case reference **C-715/18** "*Segler -Vereinigung Cuxhaven*", para 32 f.).

A different/divergent interpretation of the term "accommodation in hotels and similar establishments", namely by excluding the short-term accommodation of strangers in non-stationary accommodation containers from the reduction, would be in breach of the principle of tax 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.

Source

Supreme Tax Court, judgment of 29 November 2022 (XI R 13/20), published on 9 March 2023.

Keywords

reduced rate VAT, rental