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By PwC Deutschland | 09 May 2023

ECJ: Rental of equipment and machinery in connection with VAT exempt lease of agricultural building also free of VAT

Following a request for a preliminary ruling from the German Supreme Tax Court, the ECJ decided that the VAT exemption in connection with the letting of immovable property as provided in Article 135 of the VAT Directive may also apply to the letting of permanently installed equipment and machinery where that letting constitutes a supply ancillary to a principal supply of the lease of a building and if it constitutes from an economic point of view one single supply.

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Background

The proceedings before the ECJ, which were initiated by the German Supreme Tax Court, relate to the interpretation of Article 135 of the VAT Directive, which, i. a., provides that „*Member States shall exempt (from VAT) the leasing or letting of immovable property (Art. 135 (1) (l) VAT Directive)*“, whereas according to Art. 135 (2), first subparagraph, point (c) VAT Directive „*the letting of permanently installed equipment and machinery shall be excluded from the exemption provided for in point (l) of paragraph 1*“.

The case in dispute and the question referred

From 2010 to 2014, Y (the plaintiff) let, in the context of a lease, a turkey-rearing shed with permanently installed equipment and machinery. That equipment and machinery included, inter alia, an industrial spiral conveyor belt, which served to feed turkeys, and a heating, ventilation and lighting system maintaining a temperature and brightness appropriate to the stage of growth of the turkeys, guaranteeing the rearing conditions necessary for them to reach slaughter maturity within the specified time. That equipment and machinery were specially adapted for the use of the building as a building for the rearing of such poultry.

According to the provisions of the lease, Y received a single payment for the provision of the rearing shed and equipment and machinery. Y took the view that the whole of his leasing service was exempt from VAT. In contrast, the German tax authority took the view that the leasing of the equipment and machinery was not exempt from VAT and that the agreed one-off remuneration, 20% of which corresponded to the leasing of machinery and equipment, had to be subject to VAT.

The German Supreme Tax Court subsequently referred the following question to the ECJ:

‘*Does the VAT liability for the leasing of permanently installed equipment and machinery as prescribed under Article 135(2), first subparagraph, point (c) of the VAT Directive cover*

– only the isolated (independent) leasing of such equipment and machinery ***or also***

– the leasing (letting) of such equipment and machinery which is exempt by virtue of (and as a supply ancillary to) a letting of a building, effected between the same parties, pursuant to Article 135(1)(l) of the VAT Directive?’

Decision of the ECJ

The ECJ held that the provision in question which excludes the letting of permanently installed equipment and machinery from the VAT exemption must be interpreted as **not applying to the letting of permanently installed equipment and machinery** where that letting constitutes a supply ancillary to a principal supply of leasing a building, carried out under a leasing agreement concluded between the same parties.

The ECJ noted that it had already stated in its previous decisions that the leasing of immovable property falling within Article 135(1)(l) of the VAT Directive and the supplies of services linked to that leasing may constitute a single supply from the point of view of VAT (judgment of 27 September 2012, *Field Fisher Waterhouse*, C?392/11). In addition, in the judgment of 19 December 2018 (in the case *Mailat* C?17/18), the

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ECJ held that Article 135(1)(l) of the VAT Directive had to be interpreted as meaning that a rental contract for an immovable property which was used for the commercial operation of a restaurant and capital goods and inventory items necessary for that use constituted a single supply in which the letting of the immovable property was the principal supply.

Given the case law of the ECJ, various supplies could constitute a single economic supply and follow the same VAT scheme. The ECJ went on to say that allowing Member States to subject the various elements making up a single supply to different VAT rates would amount to allowing them to artificially split that supply and would risk distorting the functioning of the VAT system.

In the case at hand, it is therefore for the referring court to ascertain whether, as it seems likely to the ECJ, those services constitute a single economic supply. It is also for the referring court to determine whether the supplies making up such a single economic supply are principal or ancillary.

Source

ECJ judgment of 4 May in the case **C?516/21** *Finanzamt X (Outillages und machines fixés à demeure).*

Keywords

VAT Exemption, ancillary service, property rental