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By PwC Deutschland | 04 August 2023

Special VAT rate for travel agents for accommodation which is resold without ancillary services

The European Court of Justice (ECJ) decided that the service provided by a taxable person, which consists in purchasing accommodation from other taxable persons and reselling them, in its own name, to other business operators, is covered by the special value added tax scheme applicable to travel agents, even though those services are not accompanied by ancillary services.

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Background

C., a Polish company (a taxable person for VAT purposes) carries on a business as a ‘hotel services consolidator’. In the course of this activity, it offers commercial customers the possibility of booking accommodation facilities in hotels and similar establishments in Poland and abroad. Since C. does not have its own capacity, it purchases accommodation services in its own name and on its own behalf from other taxable persons, which are then resold to its customers. Depending on its customers’ needs and expectations, the company also provides advice on the choice of accommodation and help with travel arrangements. However, C. usually provides only an accommodation service. The price at which C. resells that accommodation service includes the cost of purchasing that service and C.’s margin in the form of a booking price intended to cover the transaction fee.

The local tax authority took the view that the resale of accommodation services by C. is not covered by the concept of a ‘tourist service’ referred to in Article 119 of the local VAT Act. In order for a service to be regarded as a tourist service, it must, as a complex service made up of a number of external and internal services, consist of more than one service. However, those services provided by C., which cover only accommodation, cannot constitute a tourist service because they do not involve such a complex service.

The referring court contents that - if the resale of accommodation services provided without ancillary services were to be taxed in accordance with general rules - the principle of neutrality would be infringed.

Decision

The ECJ held that the service provided by a taxable person, which consists in purchasing accommodation services from other taxable persons and reselling them to other economic operators, is covered by the special value added tax scheme applicable to travel agents, even though those services are not accompanied by ancillary services.

Based on the case-law of the Court that the exclusion from the use of the special VAT scheme under Article 306 of the VAT Directive of services supplied by a travel agent on the sole ground that they cover only the supply of accommodation would lead to a complicated tax system in which the special VAT rules applicable would depend upon the components of the services offered to each traveler. Such a tax system would fail to comply with the aims of the VAT Directive (judgment of 19 December 2018, *Alpenchalets Resorts*, **C?552/17**, paragraphs 25 to 28 and the case-law cited).

It follows that the supply by a travel agent of holiday accommodation is covered by the special VAT scheme for travel agents, even if that service covers accommodation only. In that regard, the ECJ observed that, since the mere supply of holiday accommodation by the travel agent is sufficient for the special scheme of the VAT Directive to apply, the importance of other supplies of goods or services, which may be combined with the supply of accommodation, cannot have a bearing on the legal classification of such a situation (judgment of 19 December 2018, *Alpenchalets Resorts*, C?552/17, paragraphs 29 and 33).

Note: The ECJ thus confirmed its earlier case law and, moreover, also the view of the Ministry of Finance

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laid down in the VAT Act Application Ordinance. Section 25.1 (2) sentences 1 and 6 VAT Act Application Ordinance states that, in order to be viewed as a travel service under Sec. 25 German VAT Act, an accommodation service may not only comprise a bundle of individual services but the sole provision of accommodation alone, i.e. without ancillary services in their wake, can be sufficient for the application of the margin taxation for travel services under Sec. 25 VAT Act.

ECJ, judgment of 29 June 2023 case **C?108/22** *Dyrektor Krajowej Informacji Skarbowej*

Keywords

Margin-scheme taxation, travel agent