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By PwC Deutschland | 28 November 2025

Update: ECJ referral on margin taxation for travel services

In a decision of 20 June 2024, the Supreme Tax Court asked the ECJ for a preliminary ruling as to whether the margin taxation for tour operators and travel agents must also be applied in a case of „bus excursions“ organized by a company with the intention of promoting the sale of its goods.

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Background

The German VAT Act prescribes margin taxation for tour operators and travel agents. VAT is calculated based on the profit margin in accordance with Paragraph 25 VAT Act and applied at the standard tax rate. The scope of this regulation, known under EU law as the “special regulation for travel agencies”, is by no means limited to travel agencies or tour operators, but potentially applies to all traders who provide travel services which they purchased from other traders, in particular accommodation and passenger transport services, in their own name.

The plaintiff organized excursions in the years 1997 to 1999 (years in dispute) to promote the sale of its goods. During these excursions, hereabouts commonly referred to as “coffee trips” or promotional excursions, the participants were picked up by buses and taken to destinations of tourist interest. As part of the excursions, the plaintiff organized sales events outside its business premises at which it offered the excursion participants goods which they could purchase from the plaintiff for a separate fee.

Given these circumstances, theSupreme Tax Court decided to stay the proceedings and to refer several questions to the ECJ for a preliminary ruling.

For the Supreme Tax Court, it is particularly debatable whether the promotional excursions constitute turnover within the meaning of the special regulation and are**equivalent or like the services of travel agencies or tour operators** and if such promotion tours therefore emerge as a serious competitor (**first question submitted** to the ECJ).

Such equivalence/similarity could be supported by the fact that the participation in the excursion does not differ from other coach excursions in terms of a pure transport aspect. TheSupreme Tax Court, in this respect, refers to the ECJ judgment of 13 October 2004 (case C-299/04 *Ist*): The ECJ held that here is no reason to suggest that the Community legislature intended to restrict the scope of Article 26 of the Sixth Directive regarding the ‘Special scheme for travel agents’ on the basis of two combined or distinct factors, namely the objective of the travel and the time spent in the host State. To the ECJ, any other finding would be likely to seriously restrict the scope of that article and would be incompatible with the special scheme it introduces.

However, the fact that the excursion differs from the travel services provided by travel agencies and tour operators **can be an argument against any equivalence/similarity**. Travel agencies and tour operators usually calculate with a cost overrun, as they typically want to make a profit with the travel services. The plaintiff's business model, on the other hand, is geared towards generating profits through sales of goods with which it covers the calculated losses from the excursion trips.

With **the second question**, the Supreme Tax Court asks whether a travel service within the meaning of Art. 26 of the Sixth Directive also exists in the case of a negative margin. This question is relevant if the ECJ, in response to the first question, considers the plaintiff's services as travel services.

If a negative margin does not change the qualification as a travel service, the Supreme Tax Court raises **the**

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third question as to whether a negative margin can lead to a “negative tax”, i.e. to a refund for the taxpayer.

Source:

Supreme Tax Court, decision of 20 June 2024 (V R 30/23) – published on 22 August 2024. - The **ECJ case reference** of the preliminary request is C-565/24 „*P-GmbH & Co.KG“.*

Update (28 November 2025)

In the view of **the Advocate general in his Opinion**, an interpretation is possible according to which the operations of travel agents within the meaning of that provision do not include operations which consist in organizing excursions combined with the supply of goods in a situation where the fees charged to excursion participants do not cover the entire cost of purchasing transportation services.

In the light of this, the AG proposes that the answer to the first and second questions referred for a preliminary ruling should be that the special scheme for travel agencies does not apply to the case in the main proceedings if the price charged to the participants in the excursion does not cover the total cost of purchasing the transport services from other taxable persons and if that cost forms part of the price of those goods.

If the Court agrees, the third question referred will become irrelevant. Otherwise, the answer to the third question should be that the application of the tax rate to a travel agent’s negative margin does not give rise to a taxable person’s right to a VAT refund.

*ECJ case reference **C-565/24** - P-GmbH & Co. KG (Voyages-café)- Opinion of 27 November 2024.*

Keywords

margin taxation, travel services