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By PwC Deutschland | 10 June 2025

Allocation of total sales price for „best value menu“ with different VAT rates in the catering industry

In a most recent judgment, the Supreme Tax Court held that a method for allocating a standardized total price for a certain product that results in a proportionate sales price for a combination of goods (here: „economical menu” or “best value meal“ in the „system gastronomy“) that is higher than the individual sales price is not appropriate.

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The German „*Systemgastronomie*“ or so-called system gastronomy, also known as “system food service or catering”, is a specific form of gastronomy that is characterized by standardized food preparation and operation, uniform products and central control. It is a segment within the catering industry that combines elements of food production with traditional gastronomy, typical in fast food chains.

Background

In the case of dispute, two GmbHs operated fast-food restaurants as franchisees in which, among others, combo meals („special-offer menu“ or “best value menu”) for takeaway (e.g. drinks, burgers and fries) were sold at a single standard price. Under VAT law, as confirmed by the Supreme Tax Court, there are two supplies at different VAT rates: The supply of the drink is subject to the standard tax rate (19%) whereas the supply of the food is taxed at the reduced rate of 7%.

Beginning 1 July 2014, the two GmbHs split the total price of the special-offer menu between the food and the drink using the “food and paper” method. This allocation is based on the cost of goods sold, i.e. the total of all expenses for the food and beverage. As the profit margin on drinks is typically significantly higher than the profit margin on food, this would usually result in a lower VAT rate than an allocation based on the individual sales prices.

The tax office found this method inappropriate preferring allocation at individual sale prices. The Baden-Wuerttemberg Tax Court, however, considered the “food-and-paper” method to be permissible.

Decision

The decision of theSupreme Tax Court (STC) can be summarized in a few words: The price for the burger sold as part of the special savings menu cannot be higher than its individual price.

The STC did not share the opinion of the lower tax court and held that - contrary to the opinion of the tax office - the entrepreneur does *not always* have to use the simplest possible method. He may also adopt another method if it is at least as appropriate as the allocation according to individual sales prices.

Considering the economic and commercial situation in the food industry, the F&P method used by the plaintiff is nevertheless not appropriate because it sometimes leads to the price of a product with a high cost of sales (here, for example, a burger) being significantly higher than its individual sales price.

The tax court of first instance did not examine the calculated results of the F&P method, specifically taking account of the commercial and economic circumstances. The consideration of economic and commercial reality is a fundamental criterion under the common VAT system (ECJ judgments **C-734/19** *ITH Comercial Timi?oar*a of 12 November 2020, para. 48; **C-695/20** *Fenix International* of 28 February 2023, para. 72).

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Furthermore, the F&P method also proves to be inappropriate in cases where the purchase prices for the goods changed, and this change was immediately taken into account in the F&P method even though the new goods were generally not sold in the stores until maybe a week later.

Source:

Supreme Tax Court decision of 22 January 2025 XI R 19/23 - published on 5 June 2025.

Keywords

VAT adjustment, fastfood, sale of foodstuffs