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VAT: Distinction between brokerage services and transaction on own account

In a most recently published decision, the Supreme Tax Court commented on the distinction – from a VAT point of view - between brokerage services and own-account transactions on online booking platforms: If an intermediary company clearly presents itself to the consumer as a broker, it cannot be legally be the provider of the core service unless it has actually rented the vehicle itself first, the Supreme Tax Court said.

In the case at hand, the issue was whether **the plaintiff** (a company incorporated under foreign law and headquartered in a third country), which had offered car rental services provided by various **car rental companies** through its online booking platform in 2009, had itself provided those services with respect to a specific company as part of a rental chain or if it acted as an intermediary. End-users were allowed to compare and book rental cars from various suppliers. According to the platform's terms and conditions, customers received a voucher upon booking, which they presented to the actual local car rental company to form the final rental contract on-site. The plaintiff saw itself as an intermediary and emphasized its role in dealing with the customer directly.

According to the plaintiff's interpretation, it would not have owed VAT regarding the services it provided locally because the liability for VAT would have passed to the car rental company as recipient of the services under the reverse charge mechanism. The tax office, on the other hand - in agreement with the car rental company in question -took the view that the plaintiff itself, as part of a rental chain, provided car rental services to end customers for which it would have been required to pay VAT in Germany.

Since a decision in favor of the plaintiff would have meant that the local car rental company must pay tax on the difference, the latter was summoned to the proceedings as joined party at the suggestion of the tax office.

The **court of first instance** dismissed the complaint. The plaintiff had leased vehicles from the joined party as part of a rental series and subsequently leased vehicles to customers subject to VAT in Germany. However, this conclusion was not acceptable to the Supreme Tax Court.

Here is what **the Supreme Tax Court** had to say.

The tax office's position did not carry weight. The plaintiff had merely provided brokerage services to the car rental company. One of the key points here was that the plaintiff acted on behalf of others in its dealings with customers. In any case, the tax office's assumption of a (hidden) transaction for one's own account was undermined by the fact that the plaintiff had not first rented the vehicles (subsequently out for lease) itself.

The Supreme Tax Court also expressed doubts whether the existing case law - developed in connection of trading with used vehicles – where a undisclosed transaction on own account could exists if the substance, value, and proceeds of the delivered goods has been transferred by the represented person to the representative prior to the subsequent delivery to the ultimate recipient, should be upheld. The need to assume the existence of such a transaction despite acting on behalf of another may no longer apply in light of the now applicable Section 25a of the VAT Act (which allows second-hand dealers, art and antique sellers, and used car traders to pay VAT only on their profit markup rather than the total sales price). Formerly, the Supreme Tax Court had assumed that an intermediary who, together with his principal - as the buyer of a new vehicle and the seller of a used vehicle to be taken as a trade-in - reserved the right to negotiate the actual sales price of the used vehicle with its buyer without any involvement of the principal and without safeguarding the principal's interests, to retain the difference as a "commission" for himself, and who relinquished his role as an intermediary at least when he failed to disclose the actual sales price achieved to his principal.

Under the master agreement signed between the parties, the lease agreement itself was to be concluded between the car rental company and the ultimate customer, as indeed it was. This is further supported by the fact that the master agreement precluded the car rental company (the joined party) from being bound by any conduct on the part of the plaintiff, and the plaintiff was not permitted to act as its representative.

Source: Supreme Tax Court, judgment of 21 May 2026 (V R 17/24) published on 24 September 2026.

Keywords

broker, trading platforms