



VAT NEWSLETTER

Tax Court Thuringia: Letting of Car Spaces to Residential Tenants Subject to VAT

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1 Introduction

In the opinion of the Tax Court Thuringia, as stated in its judgement of 27.06.2019 (3 K 246/19), the letting of car parking spaces to tenants is a taxable supply. Thus, the judgement contradicts the tax authorities' opinion, as well as the case law of Germany's highest tax court. The judgment is not final. An appeal is pending before the Federal Fiscal Court (V R 41/19).

2 Facts

The disputed matter regards the adjustment of input VAT amounts in accordance with sec 15a of the German VAT Act. Between 2011 and 2014, the Plaintiff was engaged in the construction of a building, which he ultimately intended to use for taxable output supplies. Accordingly, the Plaintiff deducted input VAT from the incoming supplies. In 2014, the Plaintiff decided that rather than use the building for taxable output supplies, he would instead rent the building space VAT-exempt. The building includes an underground car park, which is mainly let to tenants of residential premises in the building.

Within the scope of a special VAT audit, the tax authorities accepted a single supply consisting of the letting of living space and parking spaces. In the tax authorities' opinion, the parking space rental is the ancillary supply to residential



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space rental and shares the VAT treatment of the VAT-exempt residential space rental. The tax authorities therefore required that input VAT already deducted from the construction phase of the building would have to be corrected accordingly pursuant to sec 15a of the German VAT Act. After an unsuccessful appeal against the input VAT adjustment, the Plaintiff filed a complaint with the competent tax court. The Plaintiff was of the opinion that the input VAT adjustment, according to sec 15a of the German VAT Act, was unlawful, since the letting of the living space and the parking space did not represent a single supply. The Plaintiff believed that the letting of parking spaces was an independent supply which was subject to VAT and therefore opened up the possibility of deducting input VAT on the input supplies procured in connection with the construction of the parking spaces.

3 Court decision

The Tax Court Thuringia agreed with the Plaintiff. The Court ruled that the letting of living space and parking space is not a single supply. It found that a close spatial link between living space and parking space was unnecessary, given that access to the underground car park was also possible for external non-resident tenants of parking spaces. Furthermore, as there was a separate market for both the rental of living space and parking spaces, the Tax Court Thuringia denied that there was a sufficient economic link between the letting of living space and the letting of parking spaces.. In this respect, the letting of parking spaces is, in the opinion of the Tax Court Thuringia, an independent supply for which the VAT exemption is expressly excluded (see sec 4 no. 12 sentence 2 var. 2 of the German VAT Act). The Tax Court Thuringia therefore considered that the input VAT deducted in connection with the letting of parking spaces did not require correction.

4 Criticism

The judgment of the Tax Court Thuringia is not only contrary to the opinion of the tax authorities (see section 4.12.2 paragraph 3 of the German VAT Circular), but also to the case law of the highest courts. In the opinion of the Federal Fiscal Court, it is not objectionable to qualify the granting of parking spaces in a comparable case of hotel accommodation as an ancillary supply to the supply of accommodation services (Federal Fiscal Court, decision of 1 March 2016 - XI R 11/14, point 19 ff.) For the Federal Fiscal Court, it was irrelevant for the qualification of the parking space provision as an ancillary supply that the parking facilities "have no concrete (spatial) reference to the use of the room" (point 31). The Tax Court Thuringia contradicts this by denying an ancillary supply with the argument, among others, that there is no close spatial link between living space and parking space. Also, the argument concerning the missing economic link is not convincing. The parking space is an essential condition for many tenants to rent a flat, especially in view of the tense parking situation in urban areas. In this respect, a sufficient economic link can be affirmed.

Should the Federal Fiscal Court, contrary to its previous case law, follow the Tax Court Thuringia, the decision will be of considerable practical importance. In this case, landlords would be required to treat the letting of parking spaces as being subject to VAT, even if they were leased within the framework of a residential tenancy. An isolated taxation of the letting of parking spaces would result in numerous landlords finding themselves having to deal with VAT obligations, assuming the simplification rule for small businesses does not apply (issuing of invoices, filing of VAT returns). In this case, landlords of car parking spaces would, in principle, be entitled to deduct input VAT in respect of the input supplies procured in connection with the construction of the parking spaces.