



UMSATZSTEUER
NEWSLETTER

ECJ: Place of supply rules in respect of admission to events must be interpreted broadly – German view still up-to-date?

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1 Background

According to Art. 53 of the VAT Directive / sec 3a para 3 no 5 of the German VAT Act, supplies to taxable persons, as regards admission to events, are deemed to be rendered at the place where the event takes place. In the legal case *Srf konsulterna* (C-647/17), the ECJ was asked to decide whether 5-day accounting, management and payroll courses offered to accounting consultants were covered by this specific local provision or whether they fell under the general rule of Art. 44 of the VAT Directive / sec 3a para 2 of the German VAT Act and were therefore deemed to be rendered at the place the recipient was established. The courses were only offered to members of the respective professional group, established in Sweden. Registration, admission and payment took place prior to the beginning of the course. Some of the courses were held in Sweden, while others took place in other EU Member States. The Swedish Tax Committee decided that the respective Swedish rule, which corresponds to Art. 53 of the VAT Directive, was not applicable. The term “admission to events” referred to the right to access particular premises. The supplies of services in question, however, were characterized by the right to attend lessons. Accordingly, the Swedish authorities were of the opinion that the place of supply was deemed to be where the customer is established (Art. 44 of the VAT Directive).

2 ECJ judgment

The ECJ repeated three important principles, which are decisive for its ruling:

1. The general rules in Art. 44 and 45 of the VAT Directive (sec 3a para 1 and 2 of the German VAT Act) do not take precedence over the particular provision concerning the place of supply in Art. 46 to 59a of the VAT Directive (sec 3a para 3 – 8, sec 3b, sec 3e, sec 3f of the German VAT Act). Thus, they are not to be interpreted narrowly.



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2. The objective of the rules concerning the place of supply is to avoid double taxation and non-taxation. For this reason taxation should, as far as possible, take place where the supplies of services are consumed.
3. Where several components or acts are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split, the transaction is a single supply.

Based on this, the ECJ concluded that the place of supply, as regards the services in question, must be determined in accordance with Art. 53 of the VAT Directive. That is to say, the supplies must be taxed at the place where they were actually rendered, i.e. in the EU Member States, in which the courses took place. The view of the Swedish Tax Committee was therefore not accepted. Finally, the admission was held to include both the possibility of entering the premises where the courses took place, as well as the right to participate in the lessons. These two aspects of the service are closely and indivisibly linked. According to the ECJ, *Srf konsulterna*'s argument that the administrative burden would be increased as a result of taxation in different EU Member States, does not play a role here. It is also irrelevant whether registration, admission and payment were made in advance, as in the present case.

3 Conclusion

Unfortunately, the ECJ only dealt with a fraction of the arguments, which the Advocate General (AG) had mentioned in her Opinion. In particular, from the German point of view, a more detailed reasoning would have been desirable. The Swedish tax authority e.g. stated that Art. 53 of the VAT Directive would only be applicable if the event was open to the public, rather than only being offered to a certain group of taxable persons. From a German perspective, sec 3a.6 para 13 sentence 3 no 3 of the German VAT Circular also contains such a restriction. As mentioned here in example 2, sec 3a para 2 of the German VAT Act (Art. 44 of the VAT Directive) would be relevant if the course was not open to the general public but reserved for a limited circle of participants. Recital 641f of the Austrian VAT Guidelines has a comparable interpretation. The fact as to whether or not an event is open to the public is, according to the AG, not a decisive factor, which will automatically result in a change being made to the actual nature of the admission right. Further, this criterion is susceptible to manipulation. For instance, the supplier can exert influence on the place where the supply of service is provided by limiting or extending the circle of customers to whom he addresses his offer. The ECJ did not deal with this criterion. It is now left open to speculation whether the ECJ chose not to deal with this issue due to the fact that it did not consider it to be relevant. Perhaps, in the present case, the ECJ did not assume the restriction to be sufficient for the application of Art. 44 of the VAT Directive, based on the offer having been made to members of a professional group established in Sweden.

The AG's attempt to define the terms "event" and "admission" is also of interest. These definitions could be used in borderline cases as an aid for interpretation. The AG defines an event as a gathering of people, who participate in or observe an activity over a certain period of time (in the sense of a physical presence). The AG defines admission as the right of access (of a certain number of persons) to the premises in which an event takes place. Hence, an event becomes subject to Art. 53 of the VAT Directive as soon as a supplier checks the number of persons authorised to enter and charges them an entry fee.

It would be desirable for the German tax authorities to take this opportunity to reshape and adjust the explanations in the German VAT Circular in line with the comprehensible reasoning of the Advocate General.