



Federal Fiscal Court confirms: single supply must be subject to an uniform VAT rate

1 Introduction

In its decision of 18.01.2018 in the case Stadium Amsterdam CV – C-463/16, the ECJ decided that the same VAT rate must be applied to a single supply: A single supply may not be divided for the purpose of applying both the standard VAT rate and the reduced VAT rate (see KMLZ VAT Newsletter 04/2018). The Federal Fiscal Court confirmed these principles in its judgement of 02.08.2018 – V R 6/16.

2 Facts

The plaintiff operated an amusement park. It paid the reduced VAT rate, in accordance with sec 12 para 2 No 7 letter d of the German VAT Act, with respect to a portion of each entrance fee it received. The lower instance (Tax Court Baden-Württemberg, decision of 23.09.2015 – 14 K 4220/12) held that the entrance fees were uniformly subject to the standard VAT rate. It was for the Federal Fiscal Court to decide the question of whether the reduced VAT rate could be applied in whole or in part to the entrance fees.

3 Reasons for judgment

In the Federal Fiscal Court's opinion, the entrance fees were uniformly subject to the standard VAT rate. Firstly, the Federal Fiscal Court clarified that the Plaintiff rendered a single supply to the amusement park's visitors. Taking into consideration the view of an average customer, the bundle of individual supplies constituted an economically single supply, which must not be artificially split. Thus, the ancillary supplies, from a VAT perspective, shared the fate of the main



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supply. The Federal Fiscal Court explicitly referred to the ECJ ruling in the case Stadium Amsterdam: “An application of a VAT rate reduction in parts is therefore out of question as regards a single supply.” (see recital 18).

According to these principles, entrance fees are uniformly subject to the standard VAT rate. The reduced VAT rate, pursuant to sec 12 para 2 No 7 letter d of the German VAT Act, does not apply. The tax reduction only applies to traveling fairground amusement operators. It does not apply to a permanent fairground amusement business, such as that operated by the Plaintiff.

4 Consequences

The Federal Fiscal Court decision does not come as a surprise. The Federal Fiscal Court explicitly refers to the ECJ judgement in the legal case Stadium Amsterdam. The Federal Fiscal Court confirms the principle that the partial application of a VAT rate reduction is out of question in the case of a single supply (see recital 18). It is left open to question whether the Federal Fiscal Court will also adhere to this principle, even as regards the national obligation to split the VAT rate (e.g. obligation of splitting in the case of accommodation service supplies in accordance with sec 12 para 2 No 11 sentence 2 of the German VAT Act).

The Federal Fiscal Court was not required to consider this question in the current case. To date, both the fiscal authority and the Federal Fiscal Court have assumed that the obligation to split single supplies takes precedence over the general principles which make a distinction between the main and ancillary supply (see sec 12.16 para 8 sentence 3 of the German VAT Circular; Federal Fiscal Court, decision of 24.04.2013 – XI R 3/11). It is likely that financial court proceedings are already pending on this very issue. It therefore remains to be seen whether the Federal Fiscal Court will also have to decide this question in the near future and whether it will continue to affirm the conformity of the national obligation of splitting with Union law (see KMLZ VAT Newsletter 04/2018).