



KMLZ VAT NEWSLETTER

Wiesnbrezn (pretzels) subject to reduced tax rate

1. Facts

The Plaintiff leased stands in beer tents at the Oktoberfest to sell Wiesnbrezn. The Plaintiff employed staff to walk from table to table offering Wiesnbrezn in vendor's trays. The tax office and the tax court classified the sales through these sellers as restaurant services, subject to the standard VAT rate of 19%.

2. Legal opinion of the Federal Fiscal Court

However, in its decision of 03.08.2017 (V R 15/17), the Federal Fiscal Court, assessed the sale of Wiesnbrezn as a supply subject to the reduced VAT rate. The sale of Wiesnbrezn could only be classified as a uniform restaurant service if the Plaintiff also supplies significant services. In the Court's opinion, this was not the case. Neither the facilities for consumption nor the live music provided could be attributed to the Plaintiff. These were both supplied to the Oktoberfest visitors by third parties, namely, the beer tent operators, and therefore could not be attributed to the Plaintiff. Further, the Court ruled that a Wiesnbrezn is a simple standard food, requiring no packaging or "implements" for consumption.

Important court ruling handed down shortly before the start of the Oktoberfest

A few days before the start of the Oktoberfest, the Federal Fiscal Court published a decision on the applicable VAT rate for the sale of pretzels. The Court reconfirmed its current case law as regards the supply of restaurant services. The result: Where pretzels are sold by sellers with a vendor's tray, a VAT rate of 7% applies. If the Brezn is sold by a beer tent operator, the standard VAT rate of 19% applies. Although the result gives no cause for complaint: From a Bavarian perspective, the explanation for the ruling is quite "scandalous" and requires a counter-statement. We wish you a pleasant Oktoberfest!

3. Conclusion and consequences for the practice

By means of its decision, the Federal Fiscal Court confirms its case law. Restaurant services require that food and services are supplied by the same supplier. Services rendered by third parties are irrelevant. Apart from that, a Bavarian, however, would disagree with the explanation. Even Wikipedia states that Wiesnbrezn are a special variation of standard pretzels. For a start, it is significantly bigger. It has a light yellow to tanned crust and its consistency reminds us of freshly baked white bread. It's ideal for soaking up gravy (see wikipedia.de) and goes perfectly with veal sausage and Obatzdn (Bavarian spread cheese) and a "Mass" beer (see oktoberfest-live.de). Consequently, the Wiesnbrezn is by no means, a simple standard food! However, the decision's pleasant side effect is that foreign Oktoberfest visitors are able to take home Wiesnbrezn, at the same time benefitting from zero-rating for intra-Community and export supplies. Therefore, the Oktoberfest is certain of ever increasing international success!