



VAT NEWSLETTER

German Federal Fiscal Court: Web portals in tension between acting as intermediaries and suppliers

34 | 2026

1 Background

For digital platforms (eg web portals), the distinction between a supply of an intermediary service and a transaction conducted on one's own account is of considerable importance. This is because it determines who, from a VAT perspective, is deemed to be providing the supply offered via the platform to the customer. As a general rule, the legal relationships between the parties involved are crucial. The contractual design regularly reflects the economic and commercial reality. Contractual provisions can only be disregarded if they represent a purely artificial arrangement and do not correspond with the actual implementation.

The German Federal Fiscal Court (BFH) was recently required to decide a case involving a web portal through which customers could book hire cars from various car hire companies. Although the web portal acted as an intermediary vis-à-vis the customers, the tax office assumed that the web portal itself was operating a car hire business. The Cologne Finance Court confirmed this to be correct. The BFH went on to contradict this in its judgment of 21 May 2026 (V R 17/24). It found that a web portal for car hire does not act as an undisclosed principal if it has not hired the vehicle itself.

2 Facts of the case

The web portal, established in a third country, acted as an intermediary for car hire from various domestic car hire companies. In its dealings with customers, the web portal acted as an intermediary in accordance with its terms and conditions and its booking documents. The hire agreement was concluded between the customer and the respective car hire company upon collection of the vehicle.



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Customers paid the total price to the web portal. This comprised the net rate agreed with the car hire company and a surcharge determined by the web portal. The tax office regarded this to be a chain of hire arrangements and treated the web portal as the supplier of the car hire service. The Fiscal Court upheld this view on the grounds that, by virtue of the framework agreement with the car hire company, the web portal had engaged in activity on its own account. The web portal lodged an appeal against this judgment.

3 Decision

The BFH overturned the Fiscal Court's judgment and classified the web portal's supplies as supplies of intermediary services provided to the car hire company. The primary consideration is how the parties present themselves to third parties. In the present case, it was made sufficiently clear to customers throughout the entire booking process that the web portal was merely engaging in an intermediary activity and that the rental agreement was only concluded on site between the customer and the respective car hire company. Even the fact that the web portal collected the total price did not alter this.

The BFH also rejected the Fiscal Court's view that the web portal had acted as an undisclosed principal acting in its own name. According to the jurisprudence developed in this regard, this concept requires that the substance, value and economic benefit of the supplied service be transferred to the alleged intermediary before the supply is rendered. This was not the case in the present dispute. The web portal had neither rented the vehicles itself, nor could the framework agreement be interpreted as meaning that the supplies of rental services had been transferred to it prior to their supply. The agreed hire volumes merely served to describe the expected intermediary activity. Furthermore, according to the terms of the contract, the hire agreement was to be concluded exclusively between the car hire company and the customer, which is indeed what happened. Consequently, the web portal was not itself engaged in car hire. Rather, the web portal supplied intermediary services for which the VAT liability was transferred to the domestic vehicle rental company.

4 Practical implications

Whenever supplies of services are booked via platforms, the question always arises as to who is supplying the customer. The decision confirms that the classification of a supply, for VAT purposes, is crucial and must be assessed primarily on the basis of its actual economic substance and the manner in which it is presented to the customer. The mere fact that the platform collects the total consideration or has the freedom to set a mark-up does not mean that the platform is to be regarded as the supplier of the service. For the assumption of the platform acting as a supplier, it is essential that the platform supplies the relevant supply in its own name (for the account of a third party). Platforms should therefore review their contractual documentation, booking processes and customer communications in order to ensure that their role as an intermediary is clearly and consistently documented.

A stricter exception continues to apply to platforms that facilitate the provision of electronically supplied services. This is because, in such cases, sec. 3 para. 11a of the German VAT Act / Art. 9a of the Council Implementing Regulation deems the platform to be acting in its own name but on behalf of a third party even if it merely authorises the payment (as is usually the case). In such instances, the platform is treated – irrespective of its status under civil law or its external presentation – as if it had itself received and supplied the service. The present decision, however, concerns the general distinction for web portals between intermediary supplies and supplies made in one's own name outside this special VAT regime for electronically supplied services.