

News Flash

December 16, 2020



ECJ Judgement: Computing centre services from VAT point of view

Computing centre services from VAT point of view

According to Council Directive 2006/112/EC on the common system of value added tax, the place of supply of services connected with immovable property is the place where the immovable property is located.

Should this specific rule apply also to computing centre services with which a trader provides its customers with equipment cabinets in a computing centre for holding customers' servers together with ancillary services? Should these services be considered as services connected with immovable property for VAT purposes?

In this publication of our News Flash, we would like to briefly introduce you the recent conclusion of the European Court of Justice (ECJ) in the case C-215/19 A Oy, which dealt with the determination of the place of supply for VAT purposes of computing centre services.

Background of the case

The company A Oy, a tax resident in Finland, offers computing centre services to its customers established in Finland and in other Member States of the European Union. These services include the provision of a server cabinet with a lockable door, power supply and services ensuring the best possible operating environment for servers, such as temperature and humidity control, cooling protection, power supply interruptions monitoring, fire alarm, electronic access control and others.

The server cabinets are bolted to the floor in a building rented by A Oy. The users place their own devices in the server cabinets, which are also screwed into the server cabinets and can be removed in a matter of minutes. Customers do not have a key to the server cabinets, where their servers are placed, but after verification of their identity, they can receive it from the security service. The company A Oy is not entitled to access its customers' server cabinets.

The tax office was of the opinion that the computing centre services should be considered as services connected with immovable property as the rental of the technical space for the hosting of customers' servers is a major and necessary element of the package of services provided by A Oy.

Later on, the Helsinki Administrative Court decided to annul the tax office resolution, stating that although the server cabinets, which are intended for placing of the servers, were bolted to the floor, they could be moved without destroying or modifying the building and therefore, they do not constitute immovable property. According to the administrative court in this case, the company A Oy provides its customers with package of services, the main purpose of which is to provide customers with the best environment for the operation of their own servers.

Should the server cabinets be considered for VAT purposes as immovable property?

The case was brought before the Supreme Administrative Court of Finland, which requested the ECJ for a preliminary ruling to the following questions:

- Should the computing centre services with which a trader provides its customers with server cabinets in a computing centre for holding customers' servers together with ancillary services be regarded as the leasing or letting of immovable property?
- Alternatively, should these services in question be regarded as a service connected with immovable property, the place of supply of which is the location of the property?

The ECJ decision

According to the ECJ, the computing centre services in question do not constitute the leasing of immovable property falling within the VAT exemption. The ECJ assumes that the provider does not restrict itself to passively providing space or places to its customers by guaranteeing them the right to occupy it as if they were the owners. The ESD further argues that server cabinets are not an integral part of the building in which they are installed nor are they installed there permanently.

According to the ECJ, the computing centre services also do not constitute services connected with immovable property, where those customers do not enjoy the right to exclusive use of the part of the building in which the server cabinets are installed.

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