Court of Justice of the European Union
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Judgment in Joined Cases C-454/12 and C-455/12
Pro Med Logistik GmbH v Finanzamt Dresden-Süd
Eckard Pongratz, acting as the receiver appointed to deal with the bankruptcy of Karin Oertel v Finanzamt Würzburg

Press and Information

Taxis and minicabs may, under certain conditions, be subject to different rates of VAT

They cannot, however, be subject to different rates of tax where the journeys are carried out under identical conditions, as may be the case with regard to the transport of patients for a sickness insurance fund

EU law[1] authorises Member States to apply a reduced rate of VAT to the 'transport of passengers and their accompanying luggage'.

In Germany the legislature exercised that option by providing for a reduced rate of VAT of 7% in respect of the transport of persons by taxi, provided that that transport is carried out within a municipality or that the journey does not exceed 50 kilometres[2].

Two German minicab undertakings brought proceedings before the Bundesfinanzhof (Federal Finance Court, Germany), arguing that their supplies of local transport services should, like those performed by taxis, not be subject to the standard rate of VAT (namely 16% in respect of the years 2003 to 2006 and 19% in respect of 2007). Those supplies related, in particular, to the transport of patients pursuant to an agreement concluded between a sickness insurance fund and the 'Association of Taxi and Minicab Undertakings'. That agreement applied indiscriminately to taxi undertakings and to minicab undertakings. In particular, the transport fare fixed in that agreement applied in the same way to the two types of undertaking.

The Bundesfinanzhof points out that, in Germany, a licence is required for both transport by taxi and transport by minicab. However, those two types of transport are subject to different statutory requirements. Thus, minicab undertakings can respond only to bookings for transport which are received at their place of business or at the home of the operator, whereas taxi undertakings are authorised to respond on request, which implies that vehicles are stationed at specific locations or placed on call to respond. Furthermore, there are differences also with regard to the taking, placing and implementation of bookings for transport and so far as concerns the placing of cars on standby and advertising. In addition, the signs and characteristics reserved for taxis may not be used for minicabs. As it none the less had doubts as to the compatibility of the differing treatment for tax purposes with EU law and, in particular, with the principle of fiscal neutrality[3], the Bundesfinanzhof referred questions to the Court of Justice seeking an interpretation of EU law.

In its judgment delivered today, the Court replies by stating that **EU law** (in particular the principle of fiscal neutrality) **does not preclude local urban transport carried out,** on the one hand, **by taxi** and, on the other hand, **by minicab from being subject to different rates of VAT** (one a reduced rate and the other the standard rate), **in so far as two conditions are satisfied: (1) by reason of the different statutory requirements to which those two types of transport are subject, transport by taxi must constitute a concrete and specific aspect of the category of**

[1] Inter alia, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
[2] In respect of the years 2003 to 2007 at issue in the cases.
[3] Under the principle of fiscal neutrality, in particular, similar goods and supplies of services, which are in competition with each other, may not be treated differently for VAT purposes.

services at issue (transport of passengers and their accompanying luggage); and (2) those differences must have a decisive influence on the decision of the average user to use one such type of transport or the other. It is for the Bundesfinanzhof to determine whether those conditions are satisfied in the proceedings before it.

So far as concerns the first condition, the Court states that supplies made by taxi undertakings may be regarded as separate supplies where those undertakings must, unlike minicab undertakings, be on call to provide a transport service, which prohibits them from refusing to provide transport in the expectation of a more profitable journey or from taking advantage of situations in which they could request a fare which differs from the official fare. In such circumstances, the activity of local passenger transport by taxi could be considered to be an activity which is separate from the other supplies covered by the category at issue (transport of passengers and their accompanying luggage) and thus constitute a concrete and specific aspect of that category.

As regards the second condition, the Court observes that the average user is likely to make a distinction between the two types of transport in question, in so far as they are subject to different statutory requirements, such as those described by the Bundesfinanzhof. Each of the types of transport at issue is likely to address separate needs and therefore to have a decisive influence on the user's choice of one such type of transport or the other. The Court concludes from this that the principle of fiscal neutrality does not preclude those types of transport from being treated differently for tax purposes.

By contrast, EU law precludes local transport carried out, on the one hand, **by taxi and,** on the other hand, **by minicab from being subject to different rates of VAT** where, under a special agreement which applies indiscriminately to taxi undertakings and to minicab undertakings, (i) the transport of passengers by taxi does not constitute a concrete and specific aspect of the transport of passengers and (ii) the activity carried out under such an agreement is considered to be similar, from the point of view of the average user, to the activity of local transport of passengers by minicab. It is for the Bundesfinanzhof to determine whether that is the case.

According to the Court, the application of a different rate of VAT is precluded where the transport fare is fixed in such an agreement, if it applies in the same way to taxis and minicabs, on condition that the agreement does not give rise to any obligation to carry on business or to provide transport other than that already existing under the agreement (namely that the transport is in fact carried out) and provided that the taxi undertakings are not thus made subject under the agreement to the statutory requirements which are imposed on them outside the scope of that agreement.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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