



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-449/19  
WEG Tevesstraße v Finanzamt Villingen-Schwenningen

## **The supply of heat by a group of residential property owners to its members is subject to VAT**

*This economic activity does come under the exemption under the VAT Directive for leasing or letting immovable property*

The WEG Tevesstraße, an association of residential property owners and co-owners comprising a limited liability company, a public authority and a municipality, operates a cogeneration power unit on land belonging to its members. The electricity produced is supplied by WEG Tevesstraße to an energy distribution company, but the heat produced is supplied to its members.

As regards the supply of heat, the Finanzamt Villingen-Schwenningen (Villingen-Schwenningen tax office, Germany) refused<sup>1</sup> the deduction of input value added tax (VAT) in connection with the purchase and operation of the cogeneration power unit on the ground that the supply of heat by an association of property owners to its members is a transaction that is exempt from VAT under the German law on turnover taxes.

The Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany), hearing the action brought by the WEG Tevesstraße, **asked** the Court of Justice **whether the VAT Directive 2 precludes national legislation which exempts from VAT the supply of heat by an association of residential property owners to its members.**

**By today's judgment, the Court replies in the affirmative.**

The Court indicates, first, that **the VAT Directive applies in the present case and that the supply of heat in question is a supply of property that is, in principle, subject to VAT.**

In that regard, the Court states, inter alia, that the supply of heat by the WEG Tevesstraße is an economic activity. First, its members appear to pay it consideration based on their individual consumption and, secondly, it is irrelevant whether or not that activity is intended to generate profits and, even if this matter concerns functions assigned by national legislation, that fact is in itself irrelevant for the purposes of the classification of an economic activity.

The Court finds, next, that **the provision of the VAT Directive, according to which Member States exempt 'the leasing or letting of immovable property' from VAT, does not make it possible to exempt from VAT the supply of heat by an association of property owner to its members, as the German law on turnover taxes does.**

The exemption laid down by the VAT Directive is explained by the fact that the letting of immovable property, whilst it is an economic activity, is normally a relatively passive activity, not generating any significant added value.

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<sup>1</sup> However, for the part relating to the production electricity, the Finanzamt Villingen-Schwenningen allowed the input VAT deduction.

<sup>2</sup> Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2009/162/EU of 22 December 2009 (OJ 2010 L 10, p. 14). ('the VAT Directive').

However, by supplying the heat, the WEG Tevesstraße simply sells tangible property which is the result of the exploitation of another tangible property, albeit the latter is immovable, without however conferring on the purchasers of the heat, that is to say its members, the right to occupy an immovable property, in the present case the cogeneration power unit, and to exclude any other person from enjoyment of such a right

The Court adds that the exemption from VAT of the supply of heat by an association of residential property owners to its members, as provided for by the German law on turnover taxes, cannot be justified by a declaration of the Council and the Commission in a report from a meeting of the Council in 1977,<sup>3</sup> according to which Member States may provide for such an exemption. Neither the current VAT Directive nor the directive which preceded it contain the slightest evidence that that declaration was reflected in those provisions.

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**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 EU 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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>3</sup> Report No 7 of the meeting of the Council of the European Union of 17 May 1977 concerning Article 13 of the Sixth Directive.