



ECJ ends debate on the legality of the apportionment requirement for accommodation services

15 | 2026

1 Background

In recent years, there have been intense discussions regarding the legality of the German apportionment requirement for accommodation services. The apportionment requirement stipulates that supplies of ancillary services, which are not directly related to accommodation, are subject to the standard VAT rate, even if the reduced VAT rate for supplies of accommodation services applies according to sec. 12 para. 2 no. 11 sentence 1 of the German VAT Act (see [KMLZ VAT Newsletter 28 | 2024](#)). The debate was triggered at the time by the ECJ judgement of 18 January 2018 in the case of *Stadion Amsterdam CV* (C-463/16). In this judgement, the ECJ decided that a single supply cannot be divided so that both the standard and reduced VAT rates apply (see [KMLZ VAT Newsletter 04 | 2018](#)). Consequently, the German Federal Fiscal Court (BFH) submitted three requests for preliminary rulings to the ECJ, questioning as to whether the apportionment requirement for accommodation services, as stipulated in sec. 12 para. 2 no. 11 sentence 2 of the German VAT Act, is in conformity with Union law.

2 Facts

In the joined cases C-409/24, C-410/24, and C-411/24, hotels and guesthouses offered their guests supplies of additional services, such as the use of parking spaces, breakfast, fitness and wellness facilities, and hotel Wi-Fi, in addition to overnight stays. They classified these supplies of additional services as supplies of ancillary services to the supplies of accommodation services and uniformly applied the reduced VAT rate of 7% to all of these supplies. This approach was opposed by both the tax offices and the first instance fiscal courts. They subjected the aforementioned additional services to the standard VAT rate of 19%. Even if the services provided were to be treated as supplies of ancillary services to the



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supply of accommodation services, the apportionment requirement, in accordance with sec. 12 para. 2 no. 11 sentence 2 of the German VAT Act, would apply, stipulating that supplies of ancillary services, not directly related to the rental, are not subject to the reduced VAT rate.

The BFH assumed that the first instance fiscal courts had classified the aforementioned supplies of additional services as supplies of ancillary services in a manner that could not be legally challenged, as the supplies of additional services could neither be booked separately nor deselected. However, unlike in the past, the BFH now doubts whether the apportionment requirement is in conformity with Union law.

3 Decision

The ECJ confirms the compatibility of the apportionment requirement with Union law. A Member State may, when exercising the discretion granted to it in accordance with Art. 98 of the EU VAT Directive, isolate specific and concrete aspects within a category of supplies listed in Annex 3 of the EU VAT Directive (here: “accommodation provided in hotels and similar establishments”) and selectively apply the reduced VAT rate to them, provided this classification is based on clear, objective, and precise criteria. The Court found that Germany has established such criteria by means of sec. 12 para. 2 no. 11 of the German VAT Act and the accompanying provisions of the German Administrative VAT Guidelines.

According to the ECJ, the national regulation clearly differentiates between supplies directly related to short-term accommodation and those that are independent of accommodation. As long as the isolation of these service components does not violate the principle of tax neutrality, it is permissible under Union law. The ECJ emphasizes that it is not relevant as to whether the supplies in question are to be regarded, from the point of view of an average consumer, as part of a single transaction. The decisive factor is whether the national selection of specific and concrete aspects of the category accommodation complies with Union law requirements and is appropriately delineated. The ECJ leaves the assessment of tax neutrality to the referring court. It must examine as to whether breakfast, parking, and supplies of wellness services are typically offered separately by other suppliers and are themselves subject to the standard VAT rate. If this is the case, the national regulation, according to the ECJ, prevents potential distortions of competition and maintains neutrality.

4 Consequences for the practice

The judgement provides the long-awaited clarity for the hotel industry and similar suppliers of accommodation services. Germany is entitled to continue excluding supplies of services such as breakfast, parking, Wi-Fi, and wellness from the reduced VAT rate. The apportionment provided for in sec. 12 para. 2 no. 11 sentence 2 of the German VAT Act is in conformity with Union law. Ultimately, the ECJ assigns greater importance to the right of Member States to selectively apply the reduced VAT rate to specific aspects of accommodation than to the principle that a supply of ancillary service shares the fate of the main supply.

Suppliers of accommodation services must therefore continue to assess which service components of their supplies directly relate to the accommodation and which do not. It is also essential to accurately determine the consideration for the separately taxable service components. Even if the supply is offered at a flat rate, the legal situation requires an appropriate apportionment. The national legislator and tax authorities will see their previous practice confirmed by the judgement.