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German Tax and Legal News

CJEU rules on VAT fixed establishments

The CJEU has ruled on the creation of a VAT fixed establishment without using own human and technical resources.

The Court of Justice of the European Union (CJEU) issued a decision on October 16, 2014 on the question of whether a customer that receives a supply of services should be treated as having a fixed establishment for VAT purposes in the EU member state of the supplier when he is using the supplier's human and technical resources (Welmory Sp.z.o.o.).

The case involved an internet auction site operated by a Cypriot company using infrastructure located in Poland. The key issue was whether the Cypriot company had a fixed establishment in Poland where the services were received for VAT purposes, which would result in the Polish supplier having to account for Polish VAT. The CJEU confirmed the requirements for creating a fixed establishment and remanded the case to the referring Polish court to determine whether a fixed establishment existed.

In particular, the CJEU merely stated that a taxable person that has established its business in one member state and receives services supplied by a taxable person established in another member state must be regarded as having a fixed establishment in that other member state if the establishment is characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive the services supplied to it and use them for its business. .

While the CJEU's decision reconfirms the application of existing EU case law, it does highlight the importance of considering the specific facts of each case. Businesses operating in multiple countries should consider reviewing their arrangements to identify potential risk areas and prepare for potential challenges from the tax authorities.

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