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No fixed establishment for VAT purposes for property companies without staff

The Court of Justice of the European Union ('CJEU') confirmed in decision C-931/19 of 3 June 2021 that the letting of immovable property abroad, where the property owner does not have its own staff to perform letting-related services, does not give rise to a fixed establishment for VAT purposes in the country where the property is located.

Background

The case concerned a Jersey-based company, Titanium Ltd ('**Titanium**'), involved in real estate and asset management activities.

In the context of those activities, Titanium owned a property located in Austria which it let to local businesses. Beyond the letting of this property, Titanium performed no other economic activity in Austria. For the purposes of this specific real estate activity, Titanium designated a local real estate management company to perform property management, which included tasks such as invoicing rent, maintaining business records and preparing data for VAT returns. However, the whole decision-making process, including decisions to start or end rental agreements, set the conditions of such agreements, make investments or have repairs carried out on the property, arrange financing and choose service providers, including the property management company, continued to reside with Titanium.

In Titanium's view, it was not liable to pay VAT related to the letting activity on the basis that it did not have a fixed establishment in Austria.

This position was contested by the Austrian tax authorities, which submitted that the letting of immovable property constituted a fixed establishment and, as a consequence, VAT was due from Titanium in Austria. Bringing an action in the local courts against the position of the local tax authorities, Titanium argued that holding and letting immovable property, without having any staff of its own locally, could not constitute a fixed establishment for the purposes of VAT. In the course of the dispute, a question was referred to the CJEU to clarify whether the concept of 'fixed establishment' always requires the existence of both human and technical resources (i.e. having the business' own staff present at the establishment), or whether the letting of property without having human resources on site to perform letting-related services could also constitute a fixed establishment for VAT purposes.

CJEU judgment

The CJEU recalled that the concept of 'fixed establishment' presupposes a sufficient degree of permanence and an appropriate structure with respect to the human and technical resources necessary to perform a given economic activity in an independent manner at the place of establishment. As a consequence, the CJEU ruled that a property not accompanied by the owner company's own human resources at the property location enabling the company to act independently did not constitute a fixed establishment for VAT purposes.

This judgment provides further clarification around the evolving concept of a fixed establishment for VAT purposes that assists in determining the applicable location for services and for persons liable to pay VAT, in this instance with a focus on real estate activity. It should therefore be taken into consideration when structuring real estate activities within the EU.

How can we help?

The Arendt VAT team remains at your disposal should you require any further information in this respect.

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