



KMLZ VAT NEWSLETTER

Private hospitals treatments are also tax-exempt!

1. Facts

According to sec. 4 no. 14(b)(aa) of the German VAT Act, hospital treatments carried out by licensed hospitals are not subject to VAT in accordance with section 108 of the Social Security Code V. The Federal Fiscal Court has now decided that this German tax exemption regulation is too narrow. A license, according to sec. 108 of the Social Security Code V, must not be a mandatory requirement for VAT exemption of hospital supplies, as this would violate the European principles of equality.

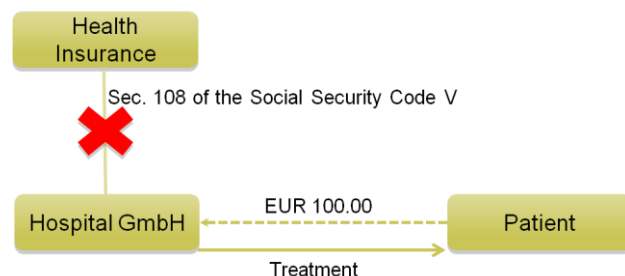
2. Factual circumstances of the decision of 25 February 2015 – V R 20/14

In 2009 a German GmbH ran a private hospital offering psychotherapy. It supplied services, including nursing and medical treatment, as well as board and lodging. The hospital was not licensed in accordance with sec. 108 of the Social Security Code V. Hospitals are generally licensed in accordance with sec. 108 of the Social Security Code V which entered into medical care agreements with fund associations. In this case, health insurance and state aid (*Beihilfestelle*) took responsibility for the payment of ap-

VAT exemption for private hospitals

If the requirements, according to the wording of a national VAT exemption regulation, of sec. 4 of the German VAT Act are not met, VAT exemptions will usually be denied by the German tax authorities. The European law is not taken into consideration. The Federal Court of Finance repeatedly directly applied a VAT Directive tax exemption regulation, in this case to supplies carried out by private hospitals. Supplies carried out by private hospitals are not subject to VAT, independent of their certification with respect to social security law.

proximately 35% of the costs for the claimant's medical treatment supplies. Due to the missing license, in accordance with sec. 108 of the Social Security Code V, the German GmbH's supplies were not tax-exempt according to sec. 4 no. 14(b)(aa) of the German VAT Act.



3. Decision of the Federal Fiscal Court

The Federal Fiscal Court decided that the private hospital's supplies were not subject to VAT according to Article 132 para. 1(b) of the VAT Directive. The decisive question was whether the GmbH was deemed to be a "recognized organization". With reference to ECJ case law, the Federal Fiscal-



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Court mentioned three characteristics of Article 132 para. 1(b) of the VAT Directive according to which it can be determined whether an institution is recognized or not:

1. public interest of the services rendered
2. other taxable persons supplying similar services are granted similar recognition.
3. costs covered by social agency.

These three characteristics do not necessarily have to apply at the same time. Rather, an overall assessment has to be made. VAT exemption is generally not denied just because the social agencies fail to take over a patient's costs. A denied reimbursement could be compensated by granting a tax exemption to other economic operators in comparable situations. An authorization of the activity is deemed to be an indication that the taxable person is recognized. The restriction, in accordance with sec. 108 of the Social Security Code V, is not, from a VAT perspective, a decisive criterion for the allocation.

4. Practical tips

The Federal Fiscal Court has consistently recognized that the VAT exemptions, as defined in Article 132 of the VAT Directive, can be directly applied. A taxable person who does not meet the requirements of the national tax exemption regulations should check if he meets the requirements of European law. National tax exemption regulations have often proven to be too narrow. As tax offices often refuse to acknowledge this, taxable persons often have to assert their rights by taking legal proceedings.

Of importance for the taxable person: He does not have to apply the EU regulations. Contrary to the German tax exemption regulations, they are not mandatory for him. The

disadvantage of a VAT exemption is the corresponding exclusion of an input VAT deduction. If the input VAT deduction is more important for the taxable person than a VAT exempt supply of goods or services, he does not have to apply the EU law (e.g. if many customers are entitled to deduct input VAT). This means he can cherry-pick. Basically, this also applies with respect to the past. This opens up new possibilities for operators of private hospitals.

The characteristic "recognized organization" is mentioned in Article 132 para. 1(g),(h),(i) of the VAT Directive. In each of these regulations, the recognition has to be assessed in light of the characteristics highlighted by the Federal Fiscal Court. According to the Federal Fiscal Court, further indications for recognition are, specific regulations relating to social security. The Federal Fiscal Court's explanations are therefore interesting beyond the individual case. It is of particular importance that VAT exemption is possible, even if the costs are not reimbursed by a social agency. If an organization had been issued an authorization by state authorities it is always deemed to be an indication of recognition.

The Federal Fiscal Court's decisions might also be applied to other hospital treatments which require that the hospital enters into a contract with the health insurances or is respectively authorized by the health insurances in accordance with the national tax exemption regulations. As far as the authorization is determined according to demand, this might fail to comply with EU law.

What is disputed in this connection is whether subcontractors of a recognized organization can be recognized themselves. Concerning this question, there are still cases before the Federal Fiscal Court and the ECJ.