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VAT'S UP

VAT NEWSLETTER

Contractual grants to sports clubs not necessarily subject to VAT

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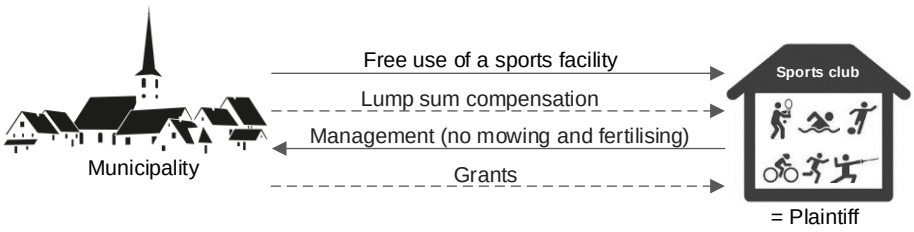
1 Facts

The dispute in question was based on the typical circumstances as found in many sports clubs in Germany. The plaintiff sports club was granted the use of a municipality owned sports facility, free of charge. In a contract of use, the club undertook, in return, to manage the entire sports facility (among other things, cleaning of the sports hall, maintenance of the green areas). In return, the municipality guaranteed the club various lump sum operating grants (e.g. EUR 4,500 for taking over the management). However, the municipality did not reserve the right of use or determination of the facility (prohibition of school sports, etc.).



While the sports club assumed that the grants were non-taxable, the tax office considered these grants to be consideration subject to VAT. The fiscal court essentially ruled in favour of the tax office. The grants were approved in fulfilment of a contractual obligation by the municipality. In addition, the municipality had the right to terminate the contract if the sports facility was not properly maintained. The municipality was therefore, for VAT purposes, to be regarded as the recipient of a service. As a result, it was exempt from operating the sports facility itself on the basis of the contract of use.

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2 Federal Fiscal Court decision

For the sports club, involving the Federal Fiscal Court proved to be a worthwhile exercise. In its decision of 18 November 2021 (V R 17/20), the Federal Fiscal Court ruled that the grants from the municipality were non-taxable. Actually, the sports club's approach had originally seemed quite hopeless. In recent years, the Federal Fiscal Court had repeatedly stated that, in principle, a taxable supply for consideration is to be assumed when a taxable person renders supplies of goods and services for consideration in fulfilment of a reciprocal agreement with a legal person under public law. The tax authorities adopted this view at a very early stage (see sec. 10.2 para. 2 sentence 6 of the German VAT Circular).

The Federal Fiscal Court now makes an important exception to this principle: in addition to the contract, the purpose pursued by the grantor must also be taken into account. If a grant is only intended to enable the sports club to maintain its sports activities, it is very possible that a genuine (non-taxable) grant exists. This is especially true if the sports club is not obliged by the municipality to provide a specific sports programme. The Federal Fiscal Court emphasises that the “economic reality” must be taken into account: in the case at hand the grants served to enable the club to use the sports facility. It is irrelevant, in this context, that the sports facility was owned by the municipality. Furthermore, municipalities have no obligation to provide sports facilities for the benefit of their citizens.

Nevertheless, the file is not yet closed. The Fiscal Court is now required to thoroughly examine the exact amount of the input VAT deduction. In this context - according to the Federal Fiscal Court - the non-taxable grants may have a negative impact on the amount of the input VAT deduction. This applies, in any case, insofar as the grants reflect the scope of the non-taxable (non-economic) activity of the association (see also KMLZ VAT Newsletter 10 | 2022).

3 Consequences for the practice

This Federal Fiscal Court decision strengthens a trend reversal in the jurisprudence of the highest courts. For many years, grants were often qualified as taxable consideration. Last year, the XI. Senate adjusted its jurisprudence and classified grants made by a church to its own media GmbH (*limited liability company*) as non-taxable (see Federal Fiscal Court, decision of 23 September 2020, XI R 35/18, KMLZ VAT Newsletter 11 | 2021). Although the legal relationship required for a taxable supply of goods or services for consideration can also arise from the articles of association, the consumable benefit must be analysed in the light of the more recent jurisprudence of the ECJ. According to the XI. Federal Fiscal Court Senate, the mere existence of the grantor’s general interests was not sufficient to assume a consideration subject to VAT. Now the V. Senate is following suit by making a very favourable decision for sports clubs. However, the latter must not become overconfident: For there is a threat that the input VAT deduction will be reduced by the tax authorities, true to the motto: if I don't get additional VAT on the supplies of goods and services for consideration, then I'll just try to reduce the input VAT deduction.

Being a board member of a sports club, I can only welcome the Federal Fiscal Court’s decision. What matters is the economic reality. Sports clubs do not want to provide their local authorities with consumable benefits, even if they have concluded contracts of use with the municipality. They only want to fulfil their charitable purpose. The environment of this voluntary activity is difficult enough, there is no need sports clubs and similar associations to be confronted with VAT risks. The public law grantors are of the same opinion. They want to support the local clubs, which are the socio-political cement of society and thus fulfil a very important role in the community.

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