

# KMLZ VAT NEWSLETTER

## Professional guardian's services retroactively VAT exempt

### 1. VAT treatment until 30 June 2013

By judgment of 25 April 2013 (V R 7/11), the Supreme Tax Court ruled that professional guardians may directly refer to the European Union law that is more favorable for them. The decision was made following the lawsuit of a professional guardian appointed by the court. The claimant applied for the VAT exemption of her services and the Supreme Tax Court agreed to the VAT exemption. Although such assistance services are neither covered by sec. 4 no. 16 nor by sec. 4 no. 18 of the German VAT Act (old version), VAT exemption of assistance services directly results from art. 132 para 1 letter g of the VAT Directive, according to the Supreme Tax Court's opinion. According to this rule, services that are closely connected to social welfare by recognized institutions are VAT exempt. According to the Supreme Tax Court's opinion, these assistance services of professional guardians are deemed to be closely connected to social welfare.

It was doubtful whether the claimant as a natural person would be considered a "recognized social institution".

### Supreme Tax Court enables tax refunds for professional guardians

Therefore, professional guardians can retroactively refer to the European Union law and claim tax refunds with retroactive effect. The latest Supreme Tax Court and European Court of Justice's jurisdiction suggests that previous national tax exemption rules were interpreted too restrictively.

The Supreme Tax Court affirms this if:

- specific rules exist
- there is public interest in the activities of the respective taxable person
- other taxable persons with the same activities have already benefited from similar acknowledgment and if
- other institutions of social security cover the costs

### 2. Recommendations for practice

As long as past tax assessments can be changed, professional guardians should claim VAT exemption of their services retroactively. This will be possible regularly for each year as of 2008. It should be noted, however, that input VAT deduction may be limited when doing so.

### 3. VAT treatment since 1 July 2013

With effect from 1 July 2013, the law has been changed and allows VAT exemption for professional guardians. Therefore, services by professional guardians, custodians and other similar services are VAT exempt according to the new version of sec. 4 no. 16 letter k of the German VAT Act.