



KMLZ VAT NEWSLETTER

Federal Fiscal Court denounces nursing crisis

1. Problem

The case in dispute concerned the issue of whether a carer, who does not meet the requirements of sec. 4 no. 16 of the German VAT Act, may directly refer to the Union VAT exemption regulation of Art. 132 para. 1 lit. g VAT Directive. It was problematic that the carer did not have a contract with the relevant care insurance company but was working, for remuneration, as a member of a registered association.



2. Facts

The plaintiff was a member of an association in the relevant years, i.e. 2007 and 2008. The plaintiff was employed as a carer without having any formal training as either a nurse or

Care services tax-free according to Union law

In the Federal Fiscal Court's opinion, supplies by carers may be tax-free even if they are not regarded as "recognized organizations". The Federal Fiscal Court specifically referred to the nursing crisis in Germany. The Court stated that such tax-free services are not only in the public interest, but are also in accordance with the principle of equal treatment.

a geriatric nurse. The association had concluded a quality agreement with the plaintiff. It was undisputable that the association supplied VAT exempt care services to the care insurance company.

However, the tax office regarded the services provided by the plaintiff to the association to be subject to VAT. The subsequent complaint brought before the tax court was unsuccessful.

3. Federal Fiscal Court, judgment of 18 August 2015, V R 13/14

The Federal Fiscal Court has now confirmed the judgment of the previous instance. Although the services are subject to VAT according to the national law, the carer could have referred to the further VAT exemptions of Union law, which the national law has inadequately implemented.



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According to Art. 132 para. 1 lit. g of the VAT Directive, the following services are VAT exempt:

*„Member States shall exempt the supply of services and of goods closely linked to welfare and social security work, **including** those supplied by old people’s homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing.“*

The case law of the ECJ and the Federal Fiscal Court make it clear that

- service-related requirements and
- personalized requirements

have to be met in order for the VAT exemption of Art. 132 para. 1 lit. g of the VAT Directive to be satisfied. It was indisputable that the plaintiff had carried out services connected to social services.

However, the question of whether the plaintiff did indeed meet the personalized requirements of the recognized organization was problematic. The tax office denied this as the carer worked as a “subcontractor“ for the association and did not have a contract with the care insurance company. The tax office found that the plaintiff was not a “recognized organization“.

The Federal Fiscal Court did not see it this way. It found that it was enough for the necessary recognition if the plaintiff had the possibility to carry out supplies to the care insurance company in accordance with sec. 77 para. 1 sentence 1 SGB XI.

Unlike in previous case-law, the Federal Fiscal Court takes the issue one step further. It is not necessary that both characteristics are cumulatively met: It is also possible that VAT exemption applies although there is no recognition.

This is only logical. Even the wording of Art. 132 para. 1 lit g of the VAT Directive suggests this treatment. This is clear from the word “including“ and the punctuation.

Additionally, the intent and purpose of the regulation also suggests that a natural person, who carries out social benefit services independently, does not require this recognition: The services to persons may only be carried out by human beings and not by machines.

4. Practical tips

Due to the latest judgment, it is clear that a direct contractual relationship is not essential. This judgment evidences a real commitment for care services in Germany. Carers, who have had no national VAT exemption according to sec. 4 no. 16 of the German VAT Act to date, may now have hope, not only for the future but also with respect to the past.