

# KMLZ VAT NEWSLETTER

## ECJ resubmission for care facilities

### 1. Referral order of the Federal Tax Court

By decision of 21 August 2013 (V R 20/12) the Federal Tax Court referred, to the European Court of Justice (ECJ), different questions regarding the interpretation of tax exemption rules according to art. 132 para 1 letter g of Directive 2006/112/EC. The core subject is the interpretation of “bodies recognized by the member state concerned as being devoted to social wellbeing”.

In the particular case, the claimant, a temporary employment agency, provided care specialists (nurses, care workers for the elderly and geriatric nurses) who were employed by his company, to other care facilities. The claimant's employees were integrated into the particular nursing facility's organizational structure. Therefore, the employees were obliged to follow instructions. However, the tax authorities did not consider these activities met the requirements of the VAT exemption rule of sec. 4 no. 16 sentence 1 lit. k of the German VAT Act.

According to Article 132 para 1 lit. g, of Directive 2006/112/EC, the Member States exempted from taxation “the supply of services and of goods closely linked to welfare and social security work, including those supplied by

### Extension of VAT exemption for care and attendance

With its decision of 21 August 2013, the German Federal Tax Court resubmitted to the ECJ the question of when an organization can be defined as “being devoted to social wellbeing”. This question is particularly relevant for the purpose of determining tax exemption for services which are provided in the context of care and nursing.

*old people's homes, by bodies governed by public law or by other bodies recognized by the Member State concerned as being devoted to social wellbeing”.*

The German Federal Tax Court now wishes to know, from the ECJ, if tax exemption rules are also applicable with respect to state qualified care specialists, who might provide services directly to dependants but are not classified as working directly in the fields of social insurance or nursing care.

At the core is the question of whether such care specialists have to be accepted by the tax law as being classified as providing services for *social wellbeing*. Secondly, the German Federal Tax Court would like to determine if a temporary employment agency, which provides state qualified care givers, can render its services VAT exempt.

### 2. Impact on practice

If the ECJ answer both questions affirmatively, the granting of an exemption for care services will finally depend on the nature of the activity. The tax exemption has to be granted not only for state qualified care givers, but also for companies who provide such personnel.