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VAT'S UP

VAT NEWSLETTER

German Federal Fiscal Court: sports clubs at risk of VAT liability on membership fees

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1 Background

In principle, membership fees for sports clubs are not subject to VAT, as the tax authorities treat them as so-called genuine membership fees. Non-genuine taxable membership fees are assumed only where specific interests of an individual member are served. For the vast majority of clubs, this has the advantage that they do not have to pay VAT on their membership fees. However, the German Federal Fiscal Court (BFH) has taken a different view for the last 15 years and has been repeating it like a mantra, with reference to EU law, that all membership fees are taxable – regardless of whether members actually make use of the benefits. This has prompted some clubs to deliberately invoke this jurisprudence when making larger investments, as they wanted to benefit from input VAT deduction. In return, they have deliberately swallowed the bitter pill of VAT liability on membership fees.

2 Facts of the case

A non-profit sports club offers recreational sports and charges membership fees for this. It is constructing a new football pitch, which is to be used both for training and for members to participate in test and league matches, as well as for hosting the 1st men's team home matches. Admission fees subject to VAT are to be charged for this. The club takes the view that, according to the jurisprudence of the BFH and the ECJ, the membership fees are taxable and that the club is therefore entitled to a full input VAT deduction from the investment costs. The tax office only agreed with this to a limited extent and referred to the Federal Ministry of Finance's letter of 4 February 2019, according to which membership fees – if they are considered to be taxable – are VAT exempt according to sec. 4 no. 22 lit. b of the German VAT Act (sporting event). This means that input VAT deduction is excluded.

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3 Decision of the BFH (judgment of 13 November 2025, V R 4/23)

Membership fees can be taxable, regardless of whether the members of the association actually make use of the benefits. The BFH refers to its established jurisprudence and takes the opportunity to reprimand the tax authorities with unusual severity: *The fact that the tax authorities – even after more than 15 years – continue to adhere to an administrative practice that contradicts established jurisprudence (sec. 1.4 para. 1 and sec. 2.10 para. 1 of the Administrative VAT Guidelines) does not lead to any other assessment*.

More interesting, however, are the interpretations of the scope of the VAT exemption under sec. 4 no. 22 lit. b of the German VAT Act, which, as is well known, requires the existence of a 'sporting event': The BFH concludes that the term 'sporting event' presupposes an organizational measure through which a club enables active athletes to practice sport. On the other hand, a sporting event does not exist if the supply is limited to the mere provision of sports facilities or equipment or to individual supplies of services such as special one-to-one training. Organizational activities that merely relate to the proper use of the facilities by the participants are also insufficient. The BFH tends not to regard free training without instruction by a trainer provided by the club as a sporting event within the meaning of sec. 4 no. 22 of the German VAT Act. As a result, this means that not every supply provided by a sports club remains VAT exempt. The specific content of the supply is, in each case, crucial.

As the findings of fact by the Fiscal Court were insufficient, the BFH referred the case back to the court of first instance and pointed out the following to the Fiscal Court: In the case of supplies of services provided by a sports club to its members, it must first be examined whether these constitute a single supply or several separate supplies. The view of an average consumer is decisive; artificial division into individual elements is not permitted.

A single supply exists if the main supply and ancillary supplies, or several closely related supply components, appear to the members as an overall supply. If the main supply is VAT exempt, the VAT exemption extends to the entire supply. If, on the other hand, there are several closely related service elements and only one part of them is subject to VAT, the entire single supply becomes subject to VAT. In the opinion of the BFH, there is much to suggest that, in the case of sports clubs – due to the different interests and the orientation of the supplies to different member groups – there are several closely related service components, so that a single supply exists. For clarification, the BFH points out that this single supply is subject to VAT in its entirety if the supply contains individual elements subject to VAT (e.g. free training without instruction). In addition, the BFH makes it clear that the reduced VAT rate will probably not apply.

4 Consequences for the practice

In future, the tax authorities will have to abandon their previous distinction between genuine and non-genuine membership fees. There is a risk that all membership fees will become taxable. In my opinion, a different approach must apply to purely passive memberships or supporting memberships. It is now up to the legislator to mitigate the negative consequences by extending the scope of sec. 4 no. 22 of the German VAT Act. As a reminder, this was already planned once before with the Annual Tax Act 2024, but was then rejected at the last minute because many associations complained about the impending loss of input VAT deduction. But here, too, there are two sides to the coin. The legislator will not be able to please everyone, even if the majority of clubs would probably argue in favour of extending the VAT exemption. If the legislator takes action, it would have to provide for generous special regulations, particularly with regard to sec. 15a of the German VAT Act.

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