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By PwC Deutschland | 10. März 2020

ECJ: VAT treatment of medical telephone consultations

In a judgement of 5 March 2020 the European Court of Justice (ECJ) dealt with the question whether telephone advisory services provided by a company on behalf of state health insurance funds through so-called “health coaches” may be free from VAT. The ECJ held that VAT exemption may indeed apply, provided the services have a therapeutic or curative objective and are of a comparable level of quality as the services provided by other suppliers in this field.

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Background

In September 2018 the Supreme Tax Court asked the ECJ to determine whether the medical advice provided by an entrepreneur to insured persons on various health and disease issues by telephone on behalf of state health insurance funds is a VAT-exempt activity under Article 132 (1) on the common system of value added tax (**first question** submitted) . According to Article 132 (1) “Member States shall exempt the following transactions….(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned.”

Furthermore the Supreme Tax Court wished to know (**second question** submitted), whether it is sufficient for a qualification in this respect (i.e.as required under EU-law) that the telephone consultations are carried out by “health coaches” (medical assistants, nurses) and that ultimately a doctor is consulted only in about one third of the cases. On behalf of state health insurance funds, the appellant operated a specific “telephone-hotline” to provide medical advice to insured persons. It also conducted patient support programs under which certain insured persons received situation-related information about their medical condition via a medical hotline and based on certain billing data and pathological pictures and symptoms.

ECJ judgement

Consultancy services relating to health and illness provided by telephone may be covered by the VAT exemption rule of Article 132(1)(c) of the Directive if they pursue a therapeutic objective, which is a matter for the national court to examine in detail (**first question** submitted).

Furthermore, Article 132(1)(a) C of the directive does not, in principle, set additional requirements as to professional qualifications for the nurses and paramedical assistants concerned while providing those services by telephone (**second question** submitted). However, this would apply only so far as the information and guidance given can be regarded as offering a level of quality comparable to that of the services provided by other suppliers, which is a matter for the national court to determine. The Member States would ultimately have to ensure that the VAT exemption applies only to medical treatment of a sufficient quality in the field of human medicine. The latter applies irrespective of the method of communication chosen for providing the medical advice. Finally, the ECJ pointed out that the principle of neutrality must be respected while answering the relevant questions. The principle of neutrality prohibits treating similar and therefore competing services differently in terms of VAT.

It will now be for the Supreme Tax Court to finally decide based on the specific circumstances in the case of the appellant. We will keep you further informed as soon as the case is dealt with and decided by the Supreme Tax Court.

Source: ECJ judgment of 5 March 2020 (**C-48/19**, *X-GmbH*)

A **full length english version** of the judgment is not available.

Schlagwörter

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health coaches, medical advice, medical telephone consultation, telephone hotline