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By PwC Deutschland | 10. Januar 2021

Medical telephone consultations through „health coaches” exempt from VAT

Telephone advisory services provided by a company on behalf of state health insurance funds through so-called “health coaches” may be exempt from VAT under Article 132 (1) of the VAT Directive as "medical treatment in the field of human medicine", if the consultations have a therapeutic purpose. This was the conclusion of the ECJ following on a request for a preliminary ruling brought by the Supreme Tax Court. The latter has now issued its subsequent (follow-up) decision and referred the case back to the Lower Tax Court for further fact finding.

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Background

On behalf of state health insurance funds, the appellant operated a specific “telephone-hotline” to provide medical advice to insured persons. This also concluded patient support programs under which 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. The tax office denied VAT exemption for these services. The Lower Tax Court of Duesseldorf had rejected the appeal as unfounded. In its rather detailed explanation of the reasons for the dismissal the court concluded that the information provided by the telephone hotline was not based on medical conclusions reached by qualified personnel, but solely on the information provided by the caller. Also it found that the counseling services of the patient support program lack the necessary therapeutic purpose. The services had neither been prescribed by a doctor nor had they been carried out as part of an individual preventive care or rehabilitation measure. The Supreme Tax Court referred the case to the ECJ for a preliminary ruling. - On 5 March 2020 the ECJ issued its judgment in the case **C-48/19**, *X-GmbH* and clearly explained the terms and conditions under which medical consultations via telephone constitute "medical treatment in the field of human medicine" within the meaning of Art. 132 (1) c of the VAT Directive. Foremost, the services must pursue a therapeutic purpose. Whether this is the case must be decided by the national courts. The plaintiff sees its position confirmed by the ECJ ruling.

Judgement

The Supreme Tax Court disagrees with Lower Tax Court since the latter had taken an altogether wrong approach and based its judgment on different assumptions. Hence, it was not possible for the Supreme Tax Court to reach a final judgement which is in accordance with the parameters set by the ECJ. Therefore, the case was referred to the Lower Tax Court on a further fact-finding mission. The latter must now bring the facts of the case in line with the ECJ judgment, observe the additional guidelines set by the Supreme Tax Court in its current follow-up decision (case ref.: XI R 6/20) and then finally decide the case.

Regarding the qualification requirements for the personnel employed, the ECJ stated that the member states have a margin of discretion and that an additional qualification could be required for telephone advice, if so foreseen by the laws of the Member State. However, as the Supreme Tax Court pointed out, there are no binding regulations in Germany on the professional requirements for the provision of medical consultation services by telephone. In its decision, the ECJ also described specific cases in which no therapeutic purposes can be established. This includes providing general information about illnesses or therapies or providing administrative information.

Source:

Supreme Tax Court (follow-up) decision of 23. September 2020, case ref.: XI R 6/20 (XI R 19/15), published on 7 January 2021.

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Schlagwörter

health coaches, medical telephone consultation, medical treatment