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Value Added Tax: No automatic exemption for sports services

Abandoning its previous case law, the Supreme Tax Court held that sports clubs cannot invoke a general VAT exemption based on the EU VAT Directive. Due to the result of an earlier ruling by the ECJ which was initiated by the Supreme Tax Court, the relevant Article 132(1)(m) of the VAT Directive 2006/112 does not a priori extend to all sports-related services provided by nonprofit organizations.

Background

The dispute went to the German tax courts because the local tax office has refused VAT exemption for certain services closely linked to the practice of golf as provided by the plaintiff (a private law association for the care and promotion of golf). The ECJ, being called upon by the Supreme Tax Court for further clarification, decided that there is no automatic VAT-exemption for sports related services of non-profit organizations (further details of the earlier ECJ judgment *Golfclub Schloss Igling* to be found in our **blog post of 13 December 2020**).

According to Sec. 4 No. 22 b German VAT Act other cultural and sporting events organized by the operators referred to in letter a (e. g. charitable organizations) and where the consideration for such service is by way of participation fees shall be exempt from VAT. In the opinion of the tax office the golf club could not be regarded as a charitable non-profit organization and hence the tax exemption was not granted.

Decision

The Supreme Tax Court, in its final decision, followed the conclusion of the ECJ while at the same time abandoning its previous divergent case law. A VAT exemption fails because the plaintiff is not a non-profit entity.

As held by the ECJ in point 50 of its decision, the non-profit-making objective of such organizations presupposes that they must not achieve profits for their members, throughout their existence, including at the time of their dissolution. If that were not the case, such an organization could, in effect, circumvent that requirement by distributing to its members, after its dissolution, all the surpluses made from all its activities, despite having benefited from tax and other advantages as a result of its classification as a ‘non-profit-making organization’.

As a result of this, the Supreme Tax Court held that the use of the golf course, the rental of golf balls, the hiring of caddies, and the sale of golf clubs is not exempt from VAT. This also applies to the organization of golf tournaments and events for which the plaintiff has received entry fees, and which would generally be within the scope of Sec. 4 No. 22 letter b VAT Act. This is because the ECJ had additionally ruled that VAT exemption in the area of sports requires that the association's assets are assigned on an ongoing basis to the realization in accordance with the purpose its Articles of Association and that it cannot be transferred to its members after the dissolution of the organization. This was not the case here.

Source:

Supreme Tax Court, decision of 21 April 2022, - V R 48/20 (V R 20/17), published on 12 May 2022.

Note: The decision directly affects only services that sports clubs provide in return for separate remuneration. However, it is of fundamental importance for the VAT situation in the sports sector in general. But: Will further legislative activities now follow? In its press release, the BFH indicates that the VAT Directive nevertheless provides options for the national legislator to exempt services in the area of sports to a greater extent than hitherto.

Schlagwörter

VAT Exemption, golf, sports club, sports services