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Services of a hygiene specialist not subject to VAT

The Muenster Tax Court has ruled that services provided by a self-employed hygiene specialist to geriatric facilities and nursing homes are exempt from VAT under Article 132 (1) (g) of the VAT Directive.

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Background

The plaintiff is a trained clinical nurse for hospital hygiene, and he works as a self-employed hygiene specialist. Among others, he provides his services to hospitals, retirement homes and nursing centers. The tax office agreed that his services to hospitals are exempt from VAT but held that the services for retirement and nursing homes are subject to VAT. The plaintiff requested that all his services be exempt, and claimed that nursing homes and hospitals are on equal footing with regard to hygiene standards.

Decision of the Muenster Tax Court

The services in dispute are not exempt from German VAT because they do not fall under the exempt category of services listed in Section 4 VAT Act. Nevertheless, the plaintiff may directly invoke the EU VAT Directive. From a purely German perspective the services are subject to VAT for the following reasons:

No treatment as medical service since a direct medical treatment in hospitals or other medical facilities as required in Sec. 4 No. 14(a) VAT Act has not been proven by the plaintiff.

Furthermore, the requirements of Sec. 4 No. 16 (d) and (e) VAT Act are not fulfilled, because the geriatric facilities and nursing homes did not provide home care and the plaintiff did not provide his services directly to the residents of these institutions.

However, under standard case law established by the ECJ it is possible for the plaintiff to rely directly on the VAT exemption in Article 132(1)(g) of the VAT Directive for supplies closely linked to welfare and social security work since this EU provision has not yet been fully transposed by Germany into national VAT law.

In its most recent judgment of 8 October 2020 (case: **C-657/19**, *Finanzamt D*), the ECJ had confirmed, among other things, that the preparation of expert reports on care and support needs by an independent expert on behalf of the medical service of a care and support insurance fund, which are used by that fund in order to assess the scope of the entitlements to welfare and social security services of persons insured by it, constitutes a supply of services that is closely linked to welfare and social security work in so far as it is essential in order to ensure the proper implementation of transactions in that sector.

From this, the Muenster Tax Court concludes that the hygiene services of the plaintiff are an essential and integral part of the services provided to the geriatric facilities and nursing homes from the point of view of social welfare and social security.

Source:

Tax Court of Muenster, decision of 1 June 2021 (15 K 2712/17 U); the judgment is final and legally binding (as no appeal was filed).

Schlagwörter

Medical care, VAT Exemption, health care