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By PwC Deutschland | 27. April 2025

VAT: Services of a gym during Corona lockdown

Services provided by a fitness studio operator are also subject to VAT if the gym is closed. The continued payment of membership fees as well as the replacement services offered by the gym operator during the corona lockdown is an exchange of services subject to VAT. According to a most recent judgment of the Supreme Tax Court this also applies if the members (as the recipients of the service) do not actually make use of the offered gym services, do not wish to do so or are unable to make use of them.

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Background

The plaintiff's business, a gym, was closed due to the Corona measures from 17 March 2020 to 17 May 2020. During this time, many members continued to pay their membership fees. The plaintiff offered live online classes, a telephone hotline, and body scans during the closure period and announced that members would be reimbursed at the end of their membership for the time they could not work out at the plaintiff's gym. The plaintiff had "only" posted a notice on site and informed via social media about the alternate procedure on the free months during closing time. He assumed that he had not provided any taxable services during the closure period and in consequence should not be subject to any VAT. The tax office did not share this view.

The tax court of Hamburg (court of first instance) largely agreed with the plaintiff and held that only the payments made prior to the closure are subject to VAT. The exchange of taxable services was lacking for April in whole or in part during March and May.

Decision

The Supreme Tax Court reversed the decision of the tax court.

The possibility of continuing the use of a fitness studio after the originally agreed contract term has expired (free additional months) is a consumable benefit even if it is not based on an agreement with the customer. There is a taxable exchange of services because of the complementing relationship from an economic point of view between the membership fees collected in advance by the entrepreneur (the consideration) and the consumable benefit (free additional months) that the members of the fitness studio gained due to their payment during the corona-related closure (lockdown).

It follows that the payments are subject to VAT as advance payments according to Section 13 (1) no. 1 letter a sentence 4 VAT Act which provides that VAT shall (also) be incurred “if the consideration or a part of the consideration is received prior to the supply, or a part of the supply being carried out (…)”.

In consequence, the membership fees collected for the months of the officially ordered closure of the fitness studio are therefore to be regarded as taxable for the subsequent bonus months. The fact that only 85 of the 761 members who continued to pay made use of the offer of bonus months does not impede the existence of a service in return for payment also for the other members. A (continuing) readiness and commitment to perform on the part of the trader is also regarded as a (completed) supply for consideration. The scope of the actual use is irrelevant. In its judgment of 3 July 2019 C-242/18 *UniCredit Leasing* the ECJ has decided in this respect, that (…) „the consideration for the amount paid by the lessee to the lessor is constituted by the right of the lessee to benefit from the performance, by that operator, of his specific obligations under the contract, even where the lessee does not wish to exercise that right, or is unable to exercise it, for a reason that is attributable to him. In fact, it is immaterial whether the property did or did not remain available to the lessee after the date of termination of the agreement; if the lessor has put the lessee in a position to benefit from the services provided pursuant to the agreement, the cessation of those services not being attributable to him“.

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Source:

Supreme Tax Court decision of 13 November 2024 XI R 5/23 – published on 17 April 2025.

Schlagwörter

Coronavirus (COVID-19), fitness studio / gym