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By PwC Deutschland | 27. Juli 2025

Takeover of emergency medical service by substitute doctor also VAT-exempt

Emergency medical services are also exempt from Value Added Tax if provided and charged by a physician on duty for another medical doctor (e.g., on weekends and outside the consultation hours of panel doctors). This was decided by the Supreme Tax Court in a recently published judgment.

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Background

The plaintiff is a self-employed physician and has concluded an agreement with the responsibleAssociation of CHI Physicians Westphalia-Lippe (*Kassenärztliche Vereinigung Westfalen-Lippe*) regarding voluntary participation in the medical emergency service. Between 2012 and 2016, he took over the duties of other physicians assigned to the emergency "on call" service as a substitute and under his own responsibility. He charged the physicians whose shift he took over an hourly rate between €20.00 and €40.00. The plaintiff considered the replacement services provided for his medical colleagues to be exempt from VAT.

The tax office and the tax court of first instance did not share this view. They believed the plaintiff provided a non-medical service in return for payment and with no therapeutic purpose. Replacing the doctors on emergency duty was therefore subject to VAT. The same were to apply as regards the blood samples taken by the plaintiff at the request of the police authority.

Decision

The Supreme Tax Court, however, agreed with the plaintiff's view on the main issue. The provision of emergency medical services (medical on-call services) by another physician in return for payment is also exempt from VAT as medical treatment within the meaning of Section 4 No. 14 letter a VAT Act („*treatment in the area of human medicine provided as part of the activities carried out by a doctor, dentist, an alternative practitioner, a physiotherapist, midwife or within the scope of a similar health providing activity*").

Although the doctors replaced by the plaintiff effectively "bought" their free time, the plaintiff was only able to release the doctors assigned to the emergency service from their duties by providing the emergency medical service himself. The emergency medical service is an acknowledged medical treatment from a VAT point of view. It ensures medical treatment in emergencies at times when regular family doctor or specialist care is not available, i. e. outside normal consultation hours. It thus ensures medical care for emergency patients in the respective precinct (service area of operation). To what extent patients actually use the emergency service is irrelevant.

In the opinion of theSupreme Tax Court, this applies equally to the medical services provided by a substitute physician and to the emergency services

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provided by physicians assigned to this task by the Association of CHI Physicians.

In this respect, the Supreme Tax Court views the provision of services by a professionally qualified subcontractor of the doctor as equivalent to the provision of services by the doctor himself. This so-called activity-based view also ensures that medical emergency services are taxed as uniformly and consistently as possible throughout Germany and disregarding the considerable regional differences in the organization of emergency services by the respective competent local Association of CHI Physicians.

As regards the second issue at dispute, the Supreme Tax Court confirmed the opinion of the lower tax court, namely that the blood samples taken by the plaintiff on behalf of the police authority are not exempt from VAT. However, regarding the years in dispute from 2014 to 2016, the plaintiff may claim the application of the special scheme for small enterprises within the meaning of Section 19 VAT Act (old version), which he has not waived.

Source:

Supreme Tax Court decision of 14 May 2025 XI R 24/23- published on 17 July 2025.

Schlagwörter

Medical health care, medical treatment