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MoF: VAT situation for loss-making institutions while simultaneously receiving public subsidies

As a result of a decision published by the Supreme Tax Court in April 2025, the Federal Ministry of Finance (MoF) has commented on the distinction between the remuneration of a service on the one hand and economic activity on the other in case of deficit-ridden institutions.

In its ruling of 22 June 2022 – XI R 35/19, the Supreme Tax Court found that there was no direct link between service and payment because the payment obligation was completely secondary. In the case of symbolic price agreements of no payment-related nature, there was no actual consideration for the service provided and therefore no exchange of services. The Supreme Tax Court based its decision on the ECJ-judgment of 12 May 2016, C-520/14, *Gemeente Borsele*.

According to established case law of the ECJ and the Supreme Tax Court, to determine whether a service has been provided for consideration and thereby also leads to an economic activity, all circumstances surrounding the activity must be examined. In doing so, the circumstances under which the person concerned provides the service must be compared with the circumstances under which such a service is usually provided.

Based on this and following the distinction between the remuneration of a service and economic activity, the tax administration believes that institutions constantly running at a loss should be subject to a two-step review:

First step: Direct link (immediate connection) between payment and service

All that matters is whether there is a direct link between the supply of goods or services and the consideration received by the service provider.

Second step: Presence of economic activity in individual cases

Since the provision of a service in return for payment is not (alone) sufficient to establish an economic activity, an overall assessment must be made as to whether the activity serves to generate sustainable income.

A so-called disparity or asymmetry between the costs incurred by the service provider and the amounts received for the services may, based on a necessary overall assessment, indicate that the required correlation between the amount paid and the provision of the service is lacking.

The MoF circular is to be applied in all open cases. A period of grace is provided: It will not be objected if, in the event of asymmetry between income and costs, the entrepreneur providing the service was safe to assume economic activity until 31 December 31, 2027, also to be applied for input VAT purposes. Similarly, in the event of asymmetry between income and costs, it will not be objected if the principles of this circular are applied for the first time to services whose underlying contracts are extended or newly concluded after the publication of this MoF letter and which, as a result, are assumed to be an economic activity until then, including for the purposes of input tax deduction.

Source:

MOF, circular of 20 January 2026 (III C 2 - S 7106/00069/003/117).

Schlagwörter

economic activity, losses