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By PwC Deutschland | 29 June 2011

Standard rate VAT on opera producer's fee

The Supreme Tax Court has rejected a claim by a opera producer that his fee should be exempt from VAT, or taxed at the reduced rate, on analogies with theatre performances.

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Entrance tickets to theatres in public ownership are exempt from VAT. Other theatres are entitled to a similar exemption on production of a certificate that they play a similar cultural role. Without this certificate, their tickets are taxed at the reduced rate. An opera producer has claimed that his fee charged to an opera house should qualify for similar privileges on the basis that his "performance" comes through to the audience through the singers on the stage. The tax office saw the fee as taxable at the standard rate for an unprivileged service.

The Supreme Tax Court has upheld the position of the tax office. An opera producer's service was directly comparable to a theatre producer's, although neither was a service to the public. They were not free, or otherwise privileged, under the letter of the VAT Act, as the producer did not, himself, appear before the audience. This distinguished him from singers or actors. He could not claim equal treatment on the grounds of an otherwise arbitrary distinction to his disadvantage from other performers, as his service was on a different level. At that level, the comparison was with a charge by one theatre to another for the loan of a producer. That charge, though, was taxable at the standard rate as a charge for the hire of staff. The producer also failed in his claim that he was entitled to exemption, or to the reduced rate, under the provisions of the Sixth Directive (now the VAT Directive). His claim ignored that fact the directive allowed member states to relieve the burden on "certain" cultural activities, and thus allowed member states to choose those to be favoured. The directive did not, in this regard, give taxpayers a direct right to preferential treatment in the face of a decision by the member state not to grant it for any given activity.

Supreme Tax Court judgment XI R 44/08 of May 4, 2011 published on June 29

Keywords

opera producer, theatres