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By PwC Deutschland | 15 November 2012

Health care VAT exemption may not be arbitrary

The ECJ has held that a condition for the VAT exemption of health care services that a minimum proportion must be supplied to members of the state system cannot be accepted if its effect is to deny equal treatment with public bodies offering the same services.

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German health care is financed partly through a system of health funds under close state supervision (”statutory” health insurance) and partly through health policies offered by insurance companies (“private” health insurance). The two systems run in parallel; every resident must be a member of one or the other, but there is generally no point in being a member of both. Outpatient health care services are free of VAT if they are provided by a limited number of public bodies, or by private organisations that supplied at least 40% of their services to members of the statutory health insurance scheme during the previous year. A case claiming the threshold to be discriminatory brought by a free-lance nurse who missed it (at the time it was two-thirds) has now come before the ECJ. The ECJ has found that there is no objection to such a threshold if the object is to ensure sufficient care for the needy and there is also, in principle, no objection to basing it on the circumstances of the previous year. However, there must be some exception to allow for new start-ups, as otherwise any new health care venture would be necessarily be subject to VAT during the first one or two years of its operation, even if it clearly confined itself to activities within the meaning of the exemption. The court accepted the threshold as such on condition that it did not operate to unduly favour the public bodies offering similar services. This was for the referring court to establish on the basis of their charters and operating circumstances.

The ECJ case reference is C-174/11 *Zimmermann*, judgment of November 15, 2012.

Keywords

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