

By PwC Deutschland | 06 March 2013

Equipment given away to sell supplies not a sample

The Supreme Tax Court has held that the free gift of test equipment in order to sell the supplies needed to operate it is not free of VAT as a sample of goods.

Goods given away free of charge are subject to VAT on their direct purchase cost, unless they are given away as samples or as low value gifts (currently a maximum of €35 per year per recipient). A supplier of medical supplies gave away blood sugar testing machine sets to diabetics to promote the sale of test strips. Each set comprised a machine, a needle to pierce the vein and a small number of test strips. The diabetic placed a drop of blood on the strip which the machine then analysed. The result was shown on the display. Each strip could be used only once. The purpose of the gift was to encourage diabetics to regularly test their blood sugar and thus to regularly buy test strips. The supplier regarded the gift of the sets as the supply of samples and therefore as free of VAT. The tax office disagreed, seeing it as a free of charge supply, taxable at its purchase cost (purchase price plus direct costs of the purchase).

The Supreme Tax Court has now decided the dispute in favour of the tax office. A tax-free sample was the free-of-charge supply of an article in order to induce the recipient to buy further quantities of that article. That definition would only be met, were the intention be to sell further quantities of the sets. However, there was never any intention of selling the machines, but only the test strips, thus only the free of charge supplies of test strips on their own could possibly rank as the VAT-free supply of samples.

Supreme Tax Court judgment XI R 36/10 of December 12, 2012, published on March 6, 2013

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