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By PwC Deutschland | 18 March 2014

Hospital pharmacy sales exempt from VAT if indissoluble from medical treatment

The ECJ has held that sales of drugs to patients by hospital pharmacies are subject to (reduced rate) VAT unless they are indissolubly linked to an exempt medical service.

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A German hospital retained a number of doctors as consultants working (largely) on their own initiative and presenting their own bills. One of their activities was the treatment of cancer out-patients. These activities were exempt from VAT as medical care. In this connection, the doctors prescribed drugs (cytostatics) to be dispensed from the hospital pharmacy. The tax office maintained that the supply by the pharmacy was separate to that by the doctor and could not fall under his medical services exemption. The hospital took the opposing view, that the drugs would not have been supplied without the exempt treatment in support of which they were prescribed and their supply fell under the main exemption.

The ECJ has taken a middle course and so avoided taking responsibility for the final decision. In principle, supplies of pharmaceuticals from hospital or other dispensaries are subject to reduced rate VAT. If, however, the supply is so closely linked to the exempt supply of medical care that the one without the other would be to no purpose, the two can be treated as an exempt medical supply notwithstanding the fact that they were provided by different persons. Whether the two supplies are “indissoluble” in this sense is for the referring court to decide.

The ECJ case reference is C-366/12 *Klinikum Dortmund*, judgment of March 13, 2014

Keywords

drugs, hospital, medical, pharmacies