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By PwC Deutschland | 25 April 2017

Preemptive warnings to competitors subject to VAT

A company dealing in the field of electronic data processing served its competitors with prior written warnings due to violations of general business terms and conditions and received reimbursement of the expenses incurred. The tax office assumed a taxable service being subject to VAT. The Supreme Tax Court confirmed this view.

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A provision of services is taxable if there is a direct link between the service provided and the consideration received. A supply of services is therefore taxable only in case of a legal relationship (connection) between the service provider and the recipient and in the course of a mutual exchange of services, i. e. the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient.

In the case at hand the reimbursement of costs is the value of consideration for the warnings and – by issuing the warnings - the company indeed provided a benefit to its competitors, namely by giving them the opportunity to resolve the dispute prior to initiating court proceedings. Following the principle of equal treatment, which applies in VAT matters through the principle of fiscal neutrality, the services in question should be treated consistently, irrespective weather the warning is legally based on the right for compensation (compensation for damage; Sect. 9 of the Act Against Unfair Competition) or via an enforcement of claims by written warning (together with a cease and desist order; Sect. 12 Act Against Unfair Competition).

Supreme Tax Court judgment XI R 27/14 of December 21, 2016 published on April 12, 2017

Keywords

competitor, preemptive warning, warning