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By PwC Deutschland | 08 May 2019

Written warnings in respect of breach of copyright are subject to VAT

The Supreme Tax Court has ruled that written warnings issued by a copyright holder in order to enforce his copyright following a breach are subject to VAT. The consideration for the written warning (deemed a service) was the payment from the person charged with breaching the copyright.

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The appellant, a record producer, instructed lawyers to take action against persons who had illegally distributed recordings over the internet. In return for the signing of a cease and desist undertaking and the payment of a (net) sum of € 450, the appellant offered to withdraw its court claim. In so doing the appellant assumed that the amounts received constituted compensation for the breach of copyright and were thus not subject to VAT. The appellant then deducted the input VAT included in the invoice of the lawyers.

The Supreme Tax Court did not accept this treatment, stating that written warnings devised to enforce a cease and desist claim were to be qualified as a supply of services subject to VAT in the form of an exchange of services between the person issuing the warning and the person receiving the warning. This was regardless of the terms which were actually used by the parties involved or of the civil law basis for the claims.

According to the Court, the warning served to benefit the person infringing the copyright as it enabled him to avoid an expensive legal process. This must be viewed as a supply of services subject to VAT. It was immaterial that, at the time the warning was issued, it was not clear whether the warning would be efficacious. A direct link existed between the written warning as a service and the payment, even when it was not certain whether the recipient of the warning had infringed the copyright or whether he would make a payment.

Source:

Supreme Tax Court (XI R 1/17) decision of 13 February 2019, published on 8 May 2019.

Keywords

VAT, supply of services, written warnings