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By PwC Deutschland | 13 December 2020

ECJ: No automatic VAT-exemption for sports related services of non-profit organizations

The ECJ held that Article 132(1)(m) of Council Directive 2006/112/EC exempting ‘the supply of certain services closely linked to the practice of sport or physical education’ is not being of direct effect and cannot be directly invoked before the national (local) courts. It is for the national court to determine in detail what kind of services provided by sports clubs are exempt from VAT.

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Background and facts

In its judgement, the ECJ has examined the VAT situation of golf clubs and golf associations with respect to a VAT exemption for services which are closely linked to sport and provided by non-profit organizations.

The legal dispute started in March 2013 with the refusal of the German tax office to exempt from value added tax (VAT) certain services closely linked to the practice of golf provided by Golfclub. Golfclub itself does not qualify as a charitable organization. Apart from the regular member fees (entry fees) Golfclub collected revenue from the following activities: (i) the use of the golf course; (ii) the rental of golf balls; (iii) the hiring of caddies; (iv) the sale of golf clubs; (v) the organization and holding of golf tournaments and events for which Golfclub has received entry fees for participation. The German tax office refused to exempt these activities from VAT on the ground that only participation fees fall under the exemption rule of German VAT law.

The Supreme Tax Court decided to refer the case to the ECJ for a preliminary ruling. In the opinion of of the Supreme Tax Court the outcome of the dispute depends on whether Article 132(1)(m) of Directive 2006/112 (”VAT Directive”) has direct effect and, therefore, *non-profit organizations* may rely directly on that provision in the event of an incorrect transposition of the VAT Directive into German VAT law.

Therefore, the **main question** raised by the Supreme Tax Court is whether, although the wording for VAT exemption in Article 132(1)(m) of Directive 2006/112 refers simply to ‘certain services closely linked to sport’, this provision can nonetheless be considered to be sufficiently precise and unconditional and, therefore, to have a direct effect. The Supreme Tax Court expressed its doubts as to whether Article 132(1)(m) of the VAT Directive has direct effect since, in its judgment of 15 February 2017, *British Film Institute* (C?592/15), the ECJ held that Article 13A(1)(n) of the Sixth Council Directive 77/388/EEC of 17 May 1977 (on the harmonization of turnover taxes) has no direct effect. The ECJ relied in particular on the fact that this provision, like in Article 132(1)(m) VAT Directive, refers to ‘certain services’ and, therefore, gives Member States a certain degree of control and discretion in deciding which type of services they exempt from VAT.

The Advocate General took a similar view and in his opinion of 7 November 2019 recommended that the ECJ rule that (in answer to the main question referred) Article 132(1)(m) has no direct effect, so that individuals cannot rely directly on it before the national courts.

ECJ decision

In its judgement the ECJ basically agrees with the opinion of the Advocate General. The main conclusion by the ECJ is that the tax exemption in Article 132(1)(m) of Directive 2006/112 does not a priori extend to all sports-related services which are provided by nonprofit organizations.

The terms used to describe the exemptions in Article 132(1) of the VAT Directive are to be interpreted in a narrow sense. The wording of that provision provides that only certain, and therefore not all, services closely

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linked to the practice of sport should be exempt from VAT. Otherwise, it would extend the scope of that exemption beyond its wording, and be contrary to previous case-law of the ECJ (i.a. in its judgment *British Film Institute*, case C?592/15) It is therefore obvious that Member States enjoy a certain discretion in the matter and can decide for themselves which type of services related to the practice of sport or physical education shall be exempt from VAT.

Accordingly, the ECJ's summary answer to the main question referred by the Supreme Tax Court is as follows:

Art. 132 (1) (m) of the VAT Directive is to be interpreted as not being of direct effect. It follows that generally non-profit organizations cannot invoke VAT exemption directly before the national courts for specific other sports related services or in connection with physical education, such type of services being not exempt under VAT law of the Member States.

Source:

ECJ judgement in *Golfclub Schloss Igling* dated 10 December 2020 (**C?488/18**)

Keywords

VAT Exemption, sports club, sports services