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To be or not to be: Disc Jockey versus brand ambassador

Is the income earned by a disc jockey taxable as income from a trade or business? Thanks to the persistence of a member of this profession, the question has now been answered. The lawsuit of a disc jockey against his local tax office which took the income as genuine business income was successful: The regional tax court of Duesseldorf held that as an artist he generates income from self-employment and therefore is not subject to trade tax.

Disc Jockey can be an artist, whereas….

The tax office considered the DJ's (plaintiff) activity as stemming from a business (sole trader). The plaintiff objected to the effect that he did not merely play songs, but changed them into new, original pieces of music, aligning the beats of the music sources so their rhythms and tempos do not clash when played together and to enable a smooth transition from one song to another. The regional tax court of Duesseldorf upheld the claim.

Let's look at the view and the reasoning of the court: A self-employed disc jockey plays, usually at weddings, birthday parties and company events, predominantly music from other composers to which he has added a new characteristic sound by mixing and processing and adding sounds and audios using a turntable, mixing desk, CD player and computer as "instruments". Hence, he performs an art work of his own creation and the taxable income stems from an independent profession rather than from a business. The court went on to say, that it is irrelevant at which type of event the plaintiff performs. The decisive factor here was that he played dance music of different genres - similar to a live band - with the help of "instruments", so to speak.

The judgment of the fiscal court is final since no further appeal was brought before the Federal Fiscal Court.

… the extra job as brand ambassador is not a work of art – main occupation is key

After having read the above, it appears quite reasonable that this, at least from a purely legal point of view, could **not** be applied in the same way to soccer coaches, who - like soccer players or others in the professional sports sector - join companies as their brand ambassador to represent their products and create and maintain a brand identity.

The Social Court of Darmstadt found in the case of a prominent soccer coach who went into collaboration with a German-based carmaker that despite all his successes, he is not an artist in a strictly legal sense. The Social Insurance Fund for Artists had demanded the carmaker pay back contributions into the Fund because the soccer coach had appeared as an artist in its commercials.

The regional Social Court ruled that active professional athletes who use their popularity for advertising purposes and in doing so generate substantial amounts of income are not artists and therefore not subject to the artists' social insurance scheme. The same would apply to coaches in sports. Prominent coaches like professional athletes are classified by their main profession. With the conclusion of an advertising contract, additional income is generated without giving up the principal profession as a coach.

As of today, the decision of the court is not yet final.

Sources:

Regional tax court of Duesseldorf, decision of 12 August 2021 (11 K 2430/18 G)

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