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By PwC Deutschland | 12 October 2022

Funeral speaker – art of the last moment?

Can an eloquent funeral speech be of artistic nature or comparable to performing artists and thus fall under the categories of services subject to the reduced VAT rate of 7 percent? No – says a tax court of first instance.

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Background

The services of performing artists comparable to theatre and concerts by performing artists are subject to the reduced VAT rate of 7 % according to Sec. 12(2) No.7 (a) VAT Act. The complaint was filed by a graduate theologian who had completed his education as an Evangelical (Lutheran) pastor. The plaintiff emphasized the special quality and uniqueness of his speeches, which were always integrated into an artistic arrangement and thus all appeared like a theater setting. The tax court of Schleswig-Holstein was then called to clarify the definition in the VAT Act of “performing artist.

Conclusion of the Schleswig-Holstein Tax Court

Funeral speakers may or may not be uniquely talented – but from a purely tax point of view, other key aspects are of relevance and the standards applied are of some higher marks.

Funeral speeches which are based on customary traditions do generally not qualify as artistic performances within the meaning of the German VAT Act. The necessary creative (performing) level is not yet met even by a sophisticated speech text of high standard. The distinction between an artistic performance and a conventional business (entrepreneurial) activity should be made while looking at the market or from the perspective of the consumer rather than use criteria relevant for the service providers themselves.

The dispute arose on the grounds of an earlier decision of the Supreme Tax Court according to which a funeral or wedding orator is a performing artist if his or her performance achieves a "creative level of design". In contrast, such speech is not an activity of art if it is essentially limited to "a template-like repetition based on a speech framework" (Supreme Tax Court decision of 3 December 2015, V R 61/14 and published on 17 February 2016).

The tax court of Schleswig-Holstein sought to implement the criteria specified by the Supreme Tax Court to the case in dispute. Due to the integration of the speeches in funeral ceremonies characterized by traditions and with a view to the usual expectations of the clients during such events, the court is of the opinion that the services of the plaintiff, despite a high degree of linguistic proficiency, are not to be qualified as artistic performance within the meaning of the above regulation in the VAT Act.

Source:

Schleswig-Holstein Tax Court, decision of 17 May 2022 (case ref. 4 K 153/20); the **appeal** is pending before the Supreme Tax Court under the file number (case ref.) V R 11/22.

Note: In a decision of 24 November 2021 (case ref. 14 K 982/20) **the Baden-Württemberg Tax Court had reached the same conclusion** in a similar case. - After her theological and philosophical studies, the plaintiff registered a self-employed activity as a funeral speaker, organizer of wedding ceremonies as well as welcoming ceremonies for newborns. She also wrote books on funeral orations and the language of mourning. The plaintiff argued that her speeches are creatively designed individual messages. She responds to the needs and personal circumstances of each occasion after personal interviews. She also prepares speech manuscripts with her own poems and thoughts. The tax court dismissed the claim and held

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that the respective speech manuscripts or the granting of rights of use had not been the main purpose of the activity. The prime intention is the preparation of a speech and its delivery, e.g., at a funeral service, and, in the case of such orders, accompanying the mourners and provide support during and after the time of mourning. – This decision is final as no appeal has been launched by the plaintiff.

Keywords

reduced rate VAT