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Supreme Tax Court: Knowledge test for prospective taxi drivers exempt from VAT

In a recent decision the Supreme Tax Court held that the local knowledge test for aspiring taxi drivers is a VAT-free service. Although the tax office and the court of first instance had ruled otherwise for several reasons, the Supreme Tax Court referred to the overriding EU VAT Directive for its conclusion in the case of dispute.

Background

Applicants aspiring to become taxi cab drivers must meet a number of requirements to obtain the taxi driving license, such as, for example, obtaining a passenger transport license, positive medical opinion, police clearance certificate, and they must be familiar with the surrounding area and know the best routes to common destinations or landmarks. In this latter regard, they must pass a local knowledge test, by demonstrating their way around local roads and the vicinity.

Exemptions from VAT are dealt with in more detail in Section 4 of the German VAT Act. Sec. 4 No. 22(a) VAT Act specifically exempts from VAT “lectures, courses and other presentations of a scientific or educational nature carried out by bodies governed by public law, by administration and business academies, by adult education centers or by institutions that serve a charitable purpose or the purposes of a professional body, provided that the revenue is primarily used to cover the incurred costs”.

The case now before the Supreme Tax Court was brought by the plaintiff, who is a non-profit registered association organizing and conducting the knowledge tests for the applicants. The candidates had to pay a fee to the plaintiff for their participation in the test. The plaintiff issued receipts for the participation and for the amount paid but without charging VAT. In his VAT return the plaintiff treated those services as VAT exempt in accordance with Sec. 4 No. 22(a) VAT Act. This came to the attention of the tax office which held that only training courses preceding the examination could be tax-exempt, but not the knowledge test as such.

Decision

The Supreme Tax Court granted the appeal on grounds of Article 44 of the EU Council Implementing Regulation (EU) No 282/2011 of the VAT Directive 2006/112/EC, which states that vocational training or retraining services provided under the conditions set out in point (i) of Article 132(1) of Directive 2006/112/EC shall include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes. The duration of a vocational training or retraining course was to be irrelevant for this purpose.

The Supreme Tax Court concludes that the local knowledge tests are the final and necessary part of a training measure for the profession of taxi cab driver and are therefore covered by the tax exemption for training courses. The local VAT regulations in Sec. 4 No. 22(a) were meant to implement the relevant provisions in the EU VAT Directive.

The fact that the knowledge test could also be done without prior training is not relevant, because this would violate the principle of neutrality and curtail the intended furtherance of certain activities through a VAT exemption if such service would only be tax-exempt on condition that the training course and the subsequent examination test are conducted by one and the same provider.

Source

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