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By PwC Deutschland | 06 December 2022

VAT exemption for supervision services

Art. 132 (1) (j) VAT Directive also covers teaching units that relate to training, advanced training, or job requalification measures as a VAT exempt service. The narrow standards and requirements set by the ECJ for the tax exemption of school and university teaching in Article 132(1) (i) do not apply here. Accordingly, the Supreme Tax Court held that services provided by a supervisor may be exempt from VAT under Article 132 (1) (j) VAT Directive.

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Background

In 2014, the plaintiff provided supervision services to various business clients who had requested these services for the workers employed by them. Minutes of the supervision sessions were not handed over by the plaintiff to the client to ensure confidentiality and to prevent the client from imposing sanctions against the participating employees. The plaintiff took records of the key issues of the meetings. In her VAT return for 2014, the plaintiff declared the services from her work as a supervisor as exempt from VAT under Section 4 No. 14 VAT Act ("*treatment in the area of human medicine*"). The tax office refused, stating that the services were not exempt from VAT either under national law or under EU law.

Decision

The Supreme Tax Court held that there is **no VAT exemption under national law** as the supervision services in question do not qualify as medical treatment in the field of human medicine. It is not sufficient if methods of medical treatment are integrated during supervision even if it might contribute to a preventive health care. Likewise, the services of the plaintiff are not exempt from VAT under Sec. 4 No. 21 letter a (bb) VAT Act (as "*services provided by private schools and other general educational or vocational institutions that directly serve the purpose of training or education, if they are state-approved*") and Sec. 4 No. 22 (a) VAT Act ("*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*"). For both types of exemptions, the plaintiff failed to meet the appropriate qualification requirements.

However, the applicant's supervision services are **exempt from VAT pursuant to article 132(1)(j) of the VAT Directive** as tuition given privately by teachers and covering "*school or university education*". This provision identifies a performance-based and a business-based condition in order to benefit from the VAT exemption. The plaintiff meets the performance-related requirements for the following reasons: The term '*school or university education*' is not limited to education which leads to examinations for the purpose of obtaining qualifications or which provides training for the purpose of carrying out a professional or trade activity, but also includes other activities which are taught in schools or universities in order to develop pupils' or students' knowledge and skills, provided that those activities are not purely recreational (ECJ judgment of 28 January 2010 **C- 473/08** *Eulitz,* para. 29).

The plaintiff has trained and improved social workers, social educators as well as other employees working in the field of care on behalf of their employers. The purpose of the supervision units was to convey competencies required in everyday professional life and not to solve the participants' personal problems through therapy. According to the findings of the court of first instance, the primary objective of the plaintiff's involvement was the joint development of solutions and patterns of action which were intended to overcome future difficulties arising in the professional environment.

The applicant also worked as a "private teacher" within the meaning of Article 132(1)(j) of the VAT Directive, because she acted on her own account and at her own responsibility and risk.

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