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MoF: Administrative services for dependent fiduciary foundations

Following an earlier decision of the Supreme Tax Court from 2024 on the VAT treatment of the administration (management) of fiduciary foundations, the Federal Ministry of Finance (MoF) has commented on the matter and amended Section 1.1 of the VAT Application Ordinance accordingly.

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Fiduciary (dependent) foundations are usually established through an agreement between a founder and a trustee. The founder transfers assets to the foundation. In the absence of legal capacity, the foundation is represented in legal transactions by the trustee. The trustee's business activities also include the activities of the dependent foundation. The latter does not have its own bodies to act on behalf of the foundation on a permanent basis.

The administration of fiduciary foundations by the trustee may constitute a taxable service in return for payment if a corresponding contract for payment has been concluded with the founder and the capital is managed separately as special assets.

This new administrative opinion, which has been added to Section 1.1 (12a) of the VAT Application Ordinance, is based on a decision of the Supreme Tax Court of 5 December2024 (V R13/22). In this decision, the Supreme Tax Court held that for the management of “dependent foundations to be subject to VAT” it would be sufficient for it to pertain to a particular segregated asset pool. A taxable consumable benefit for the recipient of the service is assumed irrespective whether the recipient is pursuing its own financial interests or the financial interests of third parties – such as charitable interests – in return for payment.

In its decree, the MoF further notes that in order to qualify as a taxable service under Section 1 (1) No. 1 of the German VAT Act, there must not only be a direct connection between the service and a consideration, but also a recipient of the service. This recipient must be identifiable and obtain a consumable benefit that would be a cost factor in the activities of another participant in economic life.

Source:

MoF, circular dated 8 December 2025 (III C 2 - S 7100/00097/037/064).

Keywords

fiduciary, foundation