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Germany:

Comparative survey on VAT, sports and sports accommodations

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General VAT treatment of sports activities

Concerning the VAT treatment of sports activities the German tax law provides for different test criteria leading to differing results for the VAT taxation of supplies and other services. It is distinguished e.g. whether the providing and the receiving entrepreneur has his seat at home or abroad, whether the beneficiary is a businessman or a private person or whether the service is used for entrepreneurial purposes. As per 01-01-2011 legislation was again considerably amended and adapted to the EU provisions of the Council Directive of common system of VAT.

If a sports performance is rendered by a self-employed sportsman/sports club as businessman under VAT aspects, it must be distinguished whether the beneficiary is a businessman who makes use of the service within the scope of his company or whether a private person is involved. If the beneficiary is a businessman using the service for his company, the location of said service is to be determined in accordance with § 3a (2) UStG and is generally at the beneficiary's place of business (beneficiary principle). The place of the miscellaneous service is considered as basis for the VAT taxation. If the beneficiary is a private person, the place of this service in accordance with § 3a (1) UStG is situated at the business place of the businessman providing the service (businessman principle). The following examples show the general VAT treatment:

Example 1:
case beneficiary = businessman
An event organiser "D" from Düsseldorf (Germany) is businessman and arranges a tennis tournament at Köln (Germany). He engages the self-employed tennis player "M" from München (Germany).
Solution:
By his active attendance in the tennis tournament the self-employed tennis player "M" performs a miscellaneous service. The place of this miscellaneous service is situated in accordance with § 3a (2) UStG at beneficiary's "D" seat, i.e. Düsseldorf. Therefore a turnover subject to tax in Germany is on hand. The provision of § 3a (2) UStG follows the regulation of Article 44 of Council Directive of common system of VAT 2006/112/EEC.

Example 2:
case beneficiary = private person
A private person "F" from Frankfurt (Germany) engages a self-employed tennis player "B" from Berlin (Germany) to play a tennis match versus him at Hamburg against payment of a fee.
Solution:
By the performance of his activity as self-employed tennis player "B" renders a miscellaneous service. The place of this miscellaneous service is in accordance with §3a (3) no. 3 Bstb. A UStG (Art. 53 of MwStSystRL) at the place of performance, i.e. Hamburg. A turnover subject to tax in Germany is on hand.

Example 3:
place of service abroad
An event organiser "A" from Amsterdam (the Netherlands) is businessman and organises a tennis tournament at Köln (Germany). He engages the self-employed tennis player "M" from München (Germany).
Solution:
By his active attendance in the tennis tournament the self-employed tennis player "M" renders a miscellaneous service. In accordance with § 3a (2) UStG (Art. 44 of MwStSystRL) the place of this miscellaneous service is at the beneficiary's "A" seat, i.e. Amsterdam. In this case a turnover not subject to tax in Germany is on hand. Tax liability is diverted to the beneficiary's country, i.e. the Netherlands.

Example 4: place of service at home – foreign businessman as tax debtor
An event organiser "D" from Düsseldorf (Germany) is businessman and organises a tennis tournament at Köln (Germany). He engages the self-employed tennis player "B" from Barcelona (Spain).
Solution:
By his active attendance in the tennis tournament the self-employed tennis player "B" renders a miscellaneous service. In accordance with § 3a (2) UStG the place of the miscellaneous service is at the beneficiary's "D" seat, i.e. at Düsseldorf. A turnover subject to tax in the inland is on hand. In order to avoid a fiscal registration of the businessman "B" from Barcelona the tax liability is in accordance with § 13b (5) UStG (Art. 194, 196 of MwStSystRL) passed on to the beneficiary "D" (reverse charge).

In accordance with § 12 (1) UStG sports activities are basically subject to a tax rate of 19%.

Reduced rates applicable?

The application of a reduced tax rate according to § 12 (2) UStG is in general not intended for sportsmen/sports clubs. The sports activity is not considered as a performance comparable with theatre per-

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formances and concerts. Likewise any tax reduction for lectures and speeches held by a self-employed professional sportsman is not provided for. Lectures and speeches are indeed language works protected by copyright but any copyrighted exploitation rights are not granted to anybody else. [3]

VAT on entrance tickets

The estimation for the VAT treatment of entrance tickets differs from the general treatment. The place of the service (sale of entrance tickets) is determined according to § 3a (3) no. 5 UStG (Art. 43-59b of MwStSystRL) and is the place of the turnover or the location of the sports event respectively. The entrance tickets are also subject to the standard tax rate of 19% because the regulation according to § 12 (2) no. 7 UStG related to a reduced tax rate does not apply for sports events.

Example 1:
basic case entrance ticket
The football club "FC" with seat at Köln sells entrance tickets for a football match at Köln to individuals as well as to businessmen.
Solution:
In accordance with § 3a (3) no. 5 EStG (Art. 43-59b of MwStSystRL) the place of the miscellaneous service is Köln where the football match takes place. The entrance tickets are subject to the standard tax rate of 19%. Tax debtor of VAT is "FC" as ticket seller.

Example 2:
non-resident service provider
Event organiser "A" from Amsterdam sells entrance tickets for a boxing match at Köln. The entrance tickets are bought by individuals as wells as by businessmen.
Solution:
In accordance with § 3a (3) no. 5 UStG (Art. 43-59b of MwStSystRL) the service is taxable in the inland because the event is actually performed in Germany. The service provider "A" resident abroad is tax liable and has to be registered in Germany for VAT purposes. A reverse charge is excluded by § 13b (6) no. 4 UStG (Art. 194, 196 of MwStSystRL).

VAT on sports accommodations

The letting of living rooms and bed rooms which a businessman provides for the short-term accommodation of sportsmen or sports clubs, the letting of spaces for vehicles and the letting of business units (sports complex) is carried out in accordance with § 3a (3) no. 1 UStG (Art. 47 of MwStSystRL) on the place of estate of the rented object. If the estate is situated in the inland a taxable service is on hand. These services are not exempt from VAT according to § 4 no. 12 S. 2 UStG. The mere service of accommodating sportsmen and sports clubs is subject to the reduced tax rate of 7%. Additional services, as e.g. the letting of parking areas, the provision of wellness offers (swimming pool, sauna, massage), however, are subject to the standard tax rate of 19%. The same applies to catering during accommodation. [4]

Right on VAT refunds?

A resident businessman may assert input VAT paid in Germany in a VAT assessment (VAT advance returns or annual assessment). If foreign input VAT amounts incur, these may be reclaimed in an input VAT refund procedure according to § 18g UStG in a separate application procedure at the Bundeszentralamt für Steuern for every EU member state. This application must be made via an official online procedure (Elster-online) until September 30th of the calendar year following the calendar year of accrual of input VAT.

The applied refund of input VAT must amount to at least EUR 400.00 for an application period of 3 months. For an annual application or an application for the last quarter the minimum amount of compensation is EUR 50.00.

Non-resident businessmen who must be registered in Germany for VAT purposes may also reclaim input VAT amounts paid in Germany with VAT advance returns or a VAT assessment. This assessment has to be issued once per year as per December 31st of the relevant calendar year and to be submitted at the competent tax office. The competence of the tax office is based upon the country of residence.

A non-resident businessman who obtains services subject to input VAT in Germany and does not achieve any assessable and taxable turnover in Germany, may implement this input VAT paid in an input VAT refund procedure in his country of residence. This applies inversely to the procedure for the inland businessman who paid input VAT abroad.

It must be noted, however, that the input VAT refund procedure by the country of residence does not work yet in all EU member countries. Businessmen from Ireland e.g. must continue to submit their input VAT refund application in Germany.

Countries outside the EU with reciprocity (e.g. USA) refund VAT paid in Germany (§ 18 (9) UStG, Art. 171 of MwStSystRL) to foreign businessmen after application. Reciprocity exists for countries outside the EU which do not levy VAT or similar tax or is refunded to resident businessmen when levied. A sportsman or sports club from a country outside the EU with reciprocity may, therefore, apply for the refund of input VAT at the Bundeszentralamt für Steuern. This application is to be submitted as hard copy on an official form to the Bundeszentralamt für Steuern until June 30th of the calendar year following the relevant calendar year.

Practice in your countries

For municipalities

With regard to income tax it must be distinguished for municipal companies whether these are in public or in private legal form. As for VAT treatment both legal forms are subject to VAT. An application on refund of input VAT is thus possible.

For municipal companies the type of activity is decisive. If qualified as commercial business it is considered as businessman with regard to VAT. If the city of Münster e.g. organises a city run and sells T-shirts for participants, the relevant qualification is given and input VAT charged by other businessmen may be deducted from the VAT to be paid within the scope of the taxation procedure.

For sports clubs themselves

For the VAT evaluation of clubs an income tax classification will be required.

If a corporation (association, club) serving tax-privileged purposes operates business

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3 Husmann in Rau/Dürrwachter, UStG Kommentar 8. Auflage, § 12 Abs. 2 Nr. 7 Bstb. C Rdnr. 88.
4 BMF Schreiben vom 05-03-2010, EV D 2 – S 7210/07/10003; BStBl 2010 Teil 1 S. 259.

in the form of special-purpose business and/or commercial business, the club's turnover in this respect may be subject to VAT insofar as the character as small-scale entrepreneur does not qualify or is waived (for explanations concerning regulation for small-scale entrepreneurship see further under "Options for VAT liability available?"). Under income tax aspects clubs must be split into three sections. Ideal activities are considered as tax-neutral. This includes membership fees, donations and subsidies. As these revenues are not connected to any service exchange and the club has not an entrepreneurial capacity in this field of activity, these revenues are not assessable. The administration of assets and the commercial business must be allocated to the entrepreneurial domain of a club. The "administration of assets" comprises e.g. the letting and lease of sports accommodations and the transfer of rights to third parties. The item commercial business must be divided into the area of a special-purpose business and the tax-disadvantageous commercial business. The tax-disadvantageous commercial business comprises e.g. receipts from advertising in sport fields, the performance of sports events against remuneration and the maintenance of sports inns. The area of special-purpose business refers e.g. to receipts from cultural events. The entrepreneurial domains of a club are subject to VAT.

In accordance with § 12 (2) no. 8a, 8b UStG the reduced tax rate of 7% must be applied for the administration of assets and for special-purpose business. If the achievement of income is, however, directly competitive with the services of other businessmen which are subject to the standard tax rate, the general tax rate of 19% must be applied (§ 12 (2) no. 8a S. 3 UStG). Turnovers within the scope of the commercial business are subject to the general tax rate.

Input VAT amounts accrued within the scope of entrepreneurial capacity may be reclaimed in accordance with the applicable provisions for the assessment and input VAT refund procedure.

Use of intermediate entities or vehicles

If the intermediate person or company acts in its own name and for its own account, the application for input VAT refund according to described preconditions and formal requirements is possible given the entrepreneurial conditions are met.

If the expenses for the intermediate person or company are, however, only transitory items (business in the name and for the account of somebody else) which is passed on to the contracting entity, an application on input VAT refund is not possible.

Canteen VAT arrangements (for sports clubs)

The maintenance of canteens is not a sports event even though this offer is directed to members only.

Regarding income tax it must be distinguished for the handout of meals whether the recipients are employees (football players of a football club) or any third parties. This classification is important in order to determine the basis of assessment for the VAT apportionable to the meals.

Canteen always subject to VAT

For an estimation of VAT provisions regarding canteens an income tax evaluation is required, too.

The handout of meals is principally subject to tax regardless of who is the beneficiary.
For a consumption on the premises (in canteens as a rule) the general tax rate of 19% has to be applied.

For determining the VAT basis of assessment it has to be distinguished, however, whether the handout of meals to an employee is made as a payment in kind (wage in form of benefit in kind) or whether the beneficiary is an external third party.

For the handout of meals to external third parties the basis of assessment is calculated in accordance with § 10 (1) UStG with regard to the remuneration less VAT. If the canteen charges EUR 5,95 for a meal the basis of assessment for this turnover is EUR 5,00 (EUR 5,95 / 1,19).

For employees' payments in kind the basis of assessment has to be determined with regard to income tax provisions. One differentiates between company-owned canteens and canteens which are not operated by the entrepreneur (employer) himself. A company-owned canteen means that the entrepreneur either produces the meals himself or treats, finishes or completes the meals significantly prior to handing them out to the employees.

For a gratuitous handout of meals to employees by a company-owned canteen which produces only meals for employees the basis of assessment is calculated with regard to the value of the payment in kind (directive 8.1 (7) income tax directive). This value of the payment in kind amounts to EUR 3,80 per meal which is given to the employee.

If meals are handed out against payment in company-owned canteens the meal price paid by the employee, however, at least the value of the payment in kind of EUR 3,80 forms the basis of the taxation. This income tax basis of assessment has to be applied for VAT, too. Up to an amount of EUR 44,00 per calendar month this payment in kind is tax-free with regard to income tax. This tax free amount, however, does not apply for VAT.

An income tax reduction of 4% of the value of the payment in kind in accordance with § 8 (3) EStG can only be taken into consideration if the meals handed out are not exclusively offered to employees. This income tax reduction does not apply, however, for VAT.

Deviating from this provision are meals and drinks which are not consumed on the premises and which are subject to a reduced tax rate of 7%. This is the case e.g. if meals are not handed out in a canteen but at a stand on a sports centre. This has been confirmed by the prevailing jurisdiction of the BFH.

Options for VAT liability available?

Tax exemptions are usually not possible for the operation of canteens. In accordance with § 19 (1) UStG VAT is not levied on the turnover of resident businessmen if the turnover did not exceed EUR 17.500,00 in the preceding year and will not exceed EUR 50.000,00 in the current year (small-scale businessman regulation) unless the businessman waives the VAT exemption according to § 19 (2) UStG. The businessman will be bound to this waiver for 5 years.

5 BFH-Urteil vom 30-06-2011, V R 35/08

Practice in case of investments in canteens

A businessman not subjected to the small-scale regulation who operates a canteen and is subject to VAT is principally entitled to input tax deduction.

In accordance with § 15 (1) UStG the entitlement to input tax deduction is linked with a duly issued purchase invoice and the entrepreneurial use of the delivery or service received. Input tax must be asserted completely at the date of accrual contrary to the income tax treatment of capital goods which are amortised during several years.

VAT integration charges

Even without an intention to realise profits with regard to income tax an entrepreneurial activity based on the intention to realise income within the meaning of the VAT law can be given. [6] A sports club is an entrepreneur under VAT aspects even without the intention to realise profits under income tax aspects and can, therefore, deduct VAT charged as input tax.

Is legally and in practice VAT due in case sports clubs develop themselves new fields or stadia?

Sports clubs not operating a commercial business but acting primarily for the benefit of its members, do not advance the general public. This is considered as an ideal activity. Revenues serve tax-privileged purposes and, therefore, revenues and expenditures are insignificant for the taxation. Revenues of the ideal scope comprise particularly membership fees, donations and subsidies. Costs irrelevant for taxation encompass e.g. costs for membership administration, association fees, costs for training and youth work and expenditures for jubilees.

This scope is not subject to VAT. VAT must not be paid, input tax cannot be deducted and refunded.

[6] BFH-Urteil v. 12-02-2009, V R 61/06, BFH/NV 2009, 1212.