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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 981

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN:	**The Netherlands**
REFERENCE:	**Article 132(1)(b) and (c)**
SUBJECT:	**VAT treatment of 'combined lifestyle intervention'**

1. INTRODUCTION

On 14 October 2019 the Netherlands requested[1] the opinion of the VAT Committee on a question concerning the VAT treatment of so-called 'combined lifestyle intervention' (hereinafter "CLI"). In particular, the Netherlands asks whether CLI qualifies as medical care covered by the VAT exemption for medical services or whether it should be considered as a taxable service of a more general nature, which is not directly aimed at nor provided in the context of a therapeutic treatment, and thus not exempted from VAT. The Commission services requested further clarifications from the Netherlands, which were provided on 15 October 2019[2].

2. SUBJECT MATTER

In essence, the Netherlands seeks to establish the scope of the exemption for medical services in Article 132(1)(b) and (c) of the VAT Directive[3], which read as follows:

"*Article 132*

1. Member States shall exempt the following transactions:

[…]

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

[…]".

3. THE COMMISSION SERVICES' OPINION

3.1. The interpretation of exemptions in the VAT Directive in general

According to settled case-law of the Court of Justice of the European Union (CJEU), the exemptions in Article 132 of the VAT Directive are independent concepts of EU law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another[4]. The CJEU has consistently held that the VAT exemptions are to be interpreted strictly since they constitute exceptions to the general principle that VAT is

1 See Annex 1.
2 See Annex 2.
3 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).
4 See, *inter alia*, judgment of 25 February 1999, *CPP*, C-349/96, EU:C:1999:93, paragraph 15.

to be levied on all services supplied for consideration by a taxable person[5]. Nevertheless, the interpretation must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Thus, the requirement of strict interpretation does not mean that the exemptions should be construed in such a way as to deprive the exemptions of their intended effect[6].

3.2. The objective of the exemptions in Article 132(1)(b) and (c) of the VAT Directive and the scope of the term "medical care"

The objective of the exemptions in Article 132(1)(b) and (c) is to reduce the cost of medical care and to make that care more accessible to individuals[7]. The CJEU has held that the term "medical care" is interchangeable in both points (b) and (c) of the provision, i.e. that the wording is identical in its implication. Hence, the wording of medical care in Article 132(1)(b) includes all services of medical care in Article 132(1)(c) and vice versa[8].

The concept of "hospital and medical care" and "the provision of medical care" covers services that are intended to diagnose, treat or cure diseases or health disorders or to protect, maintain or restore human health[9]. The therapeutic purpose of the medical care should not necessarily be interpreted narrowly[10]. It is thus consistent with the aim of reducing healthcare costs to consider examinations or medical interventions of a prophylactic nature as medical care, even when the person concerned is clearly not suffering from any disease or health disorder[11]. For determining whether a service should be exempt from VAT, the decisive factor is the principal purpose of that service[12].

Prophylactic medical treatments are thus subject to strict criteria in order to be considered medical care as per the wording and purpose of Article 132(1)(b) and (c). The CJEU has underlined, for instance, that plastic surgery and cosmetic treatments performed for a purpose other than to diagnose, treat or cure diseases or health disorders or to protect, maintain or restore human health, in principle do not fall within the scope of medical care and thus are subject to VAT[13]. Therefore, it is clear that medical services whose purpose is not the protection of human health cannot be exempted from VAT[14].

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5 See, *inter alia*, judgment of 5 June 1997, *SDC*, C-2/95, EU:C:1997:278, paragraph 20 and the case-law sited, and judgment of 10 September 2002, *Kügler*, C-141/00, EU:C:2002:473, paragraph 28.

6 See, *inter alia*, judgment of 10 June 2010, *Future Health Technologies*, C-86/09, EU:C:2010:334, paragraph 30and the case-law cited .

7 Judgment of 6 November 2003, *Dornier*, C-45/01, EU:C:2003:595, paragraph 43, and *Kügler*, paragraph 29.

8 *Dornier*, paragraphs 50-51.

9 See, *inter alia*, judgment of 21 March 2013, *PFC Clinic*, C-91/12, EU:C:2013:198, paragraphs 25, 27-28 and case-law cited, and judgment of 8 June 2006, *L.u.P*, C-106/05, EU:C:2006:380, paragraph 27.

10 *PFC Clinic*, paragraph 26 and case-law cited.

11 Judgment of 20 November 2003, *Unterpertinger*, C-212/01, EU:C:2003:625, paragraph 40.

12 *Unterpertinger*, paragraph 42.

13 *PFC Clinic*, paragraphs 27-29.

14 *Unterpertinger*, paragraph 44.

3.3. Can CLI be considered medical care for the purposes of the VAT exemption?

In accordance with the definition of medical care provided by the CJEU, the purpose of CLI is decisive in order to determine whether it is covered by the VAT exemptions of Article 132(1)(b) and (c) of the VAT Directive.

The Netherlands notes that a CLI programme consists of a "*combination of interventions aimed at reducing energy intake through nutritional advice, increasing physical activity under supervision and, if necessary, psychological interventions to support behavioural change in nutrition and exercises*". The CLI aims "*at a better lifestyle and with that at prevention, which should lead to a reduction of the use of traditional forms of health care (e.g. general practitioners, physical therapists, dietitians, medical specialists and use of medication) by overweight and obese people*".

The costs of CLI programmes that, according to the request by the Netherlands, "have been proved effective" may be reimbursed by the health insurance of the participant only under the following conditions:

- the participant has a medical necessity to participate in the CLI programme (on the basis of their Body Mass Index and the risk of cardiovascular disease or type 2 diabetes);
- the participant has been referred to the CLI programme by a general medical practitioner;
- the provider of the CLI programme has the competences required by the CLI programme, and
- the provider of CLI regularly aligns the content of the offered interventions with the general practitioner of the participant.

However, reimbursement is currently capped on a yearly fixed budget. Thus, it is possible that the cost of applications within the same CLI programme or between comparable acknowledged CLI programmes is not all reimbursed, due to the yearly budget being exceeded.

The professionals providing CLI services do not need to be medical or paramedical professionals. Since the aim of CLI is to reduce the use of traditional (expensive) forms of healthcare, in principle no medical practitioners are actively involved in CLI programmes and/or offering components of such programmes. It is mainly lifestyle coaches, dietitians, physiotherapists and (personal) sports trainers who provide CLI services[15].

Those CLI coaches guide the participants in changing their lifestyle, using their own knowledge about nutrition, exercise and other aspects of lifestyle (such as sleep and relaxation habits). It is possible that third parties (e.g. a dietitian) carry out parts of the programme upon request of the CLI coach, for instance when specific knowledge is required.

[15] Some lifestyle coaches such as dietitians and physiotherapists may be paramedical professionals.

Based on the information provided by the Netherlands, it appears that CLI programmes are mainly addressed to people wishing to adopt a healthier lifestyle through better nutrition and increased physical activity (but also through improved sleep habits and relaxation techniques). They may certainly target overweight and obese people but not exclusively, given that poor nutrition, lack of exercise and a stressful lifestyle concern an ever-increasing part of the population. Consequently, people who are neither overweight nor obese but simply wish to improve their nutritional habits or to increase their physical activity are not precluded from participating in a CLI programme.

There is no doubt that adopting a healthier, more active lifestyle can prevent (or even treat) diseases. In this regard, it certainly can result in protecting, maintaining or restoring human health. The Netherlands itself acknowledges the fact that CLI programmes should lead to a reduction in the use of traditional forms of healthcare. However, it is understood that the principal aim of CLI is to guide the participants to a lifestyle change; in other words, CLI services have neither a prophylactic nor a therapeutic aim. Thus, there does not seem to be a strong, direct causal link between the purpose of the CLI services and the protection of human health. In the light of the above, it is considered that CLI services cannot qualify as medical care covered by the VAT exemptions for medical services of the VAT Directive.

Nevertheless, it cannot be excluded that in certain cases the main aim of the CLI could also be to protect, maintain or restore the health of the participant. Such cases could relate to circumstances where, for instance, there is an undeniable medical necessity to participate in a CLI programme and where CLI could be prescribed by the competent medical practitioner as part of the participant's medical treatment. However, this can only be assessed on a case-by-case basis by the national authorities. Even under such a scenario, where CLI services could be perceived as medical care in the sense of the VAT exemptions at issue, it would appear unlikely that the remaining conditions be met for Article 132(1)(b) or (c) of the VAT Directive to apply. For instance, CLI centres could hardly be considered as "*hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature*", as requires Article 132(1)(b). Similarly, CLI services could in principle not be considered provided "*in the exercise of the medical and paramedical professions*", as required by Article 132(1)(c), since the CLI coaches are in principle neither medical nor paramedical professionals. Therefore, even in the event that CLI services could be perceived as "medical care" for the purposes of Article 132(1)(b) or (c) of the VAT Directive, it is deemed that they would not be eligible for an exemption from VAT since the remaining conditions for the application of either of those provisions would not be fulfilled.

3.4. Conclusions

The Commission services therefore agree with the assessment of the Netherlands. From the information provided, it appears that in principle CLI services cannot qualify as medical care falling under the VAT exemption for medical services of Article 132(1)(b) or (c) of the VAT Directive. Such services would instead be considered taxable services of a more general nature, which are not directly aimed at nor provided in the context of a prophylactic or therapeutic treatment. Therefore, they cannot be considered eligible for a VAT exemption under the above provisions.

4. DELEGATIONS' OPINION

The delegations are requested to give their opinion on this matter.

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ANNEX 1

QUESTION FROM THE NETHERLANDS

1. Subject

VAT rules applicable on so-called 'combined lifestyle intervention'.

2. Legal framework

Article 132 of the VAT Directive /EG (hereinafter: the VAT Directive) rules:

"1. Member States shall exempt the following transactions: (…)

b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned; (…)"

3. Issue raised

– A so-called Combined Lifestyle Intervention (CLI) program is a combination of interventions aimed at reducing energy intake through nutritional advice, increasing physical activity under supervision and, if necessary, psychological interventions to support behavioural change in nutrition and exercises.

– The CLI is aimed at a better lifestyle and with that at prevention, which should lead to a reduction of the use of traditional forms of health care (e.g. general practitioners, physical therapists, dieticians, medical specialists and use of medication) by overweight and obese people.

– A variety of professionals offers CLI, such as lifestyle coaches, dietitians, physiotherapists, (personal) sports trainers etc.

– A CLI-coach guides the participant in changing his/her lifestyle. The CLI-coach uses his/her own knowledge about nutrition, exercise and other aspects of lifestyle (such as sleep and relaxation habits). It is also possible that parts of the program are carried out by third parties (e.g. a dietician) upon request of the CLI-coach, for instance when specific knowledge is required.

– CLI-programs that have been proved effective may, under certain conditions, be eligible for reimbursement from the health insurance of the participant in the CLI-program. Prerequisites for the reimbursement are:

- the participant has a medical necessity to participate in the CLI-program[1],
- the participant has been referred to the CLI program by a general medical practitioner,
- the provider of the CLI program has the competences required by the CLI program, and
- the provider of CLI regularly aligns the content of the offered interventions with the general practitioner of the participant.

– The health insurer of the participant does not reimburse programs comparable to CLI that do not meet the aforementioned conditions.

– Reimbursement from the health insurance of the CLI-participant is currently capped on a yearly fixed budget. It may therefore be possible that within the same CLI-programme or between comparable acknowledged CLI-programmes not all applications are reimbursed due to exceedance of the yearly budget.

– The question is whether CLI as a prevention program through lifestyle intervention qualifies as medical care that is exempt from VAT or that it should be considered a taxable service of a more general nature which is not directly aimed at nor in the context of a therapeutic treatment as required for application of the VAT-exemption.

4. Dutch Tax Authorities' interpretation

– The terms used to specify the exemptions in article 132 of the VAT Directive are to be interpreted strictly, since they constitute exceptions to the general principle, arising from article 2(1)(a) and (c) of the VAT Directive, that VAT is to be levied on all goods and services supplied for consideration by a taxable person. Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Thus, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in article 132 should be construed in such a way as to deprive the exemptions of their intended effect.[2]

– As regards medical services, it follows that article 132(1)(b) and (c) of the VAT Directive, which had separate fields of application, were intended to regulate all exemptions of medical services in the strict sense.[3]

– The concept of 'medical care' in article 132(1)(b) of the VAT Directive and that of 'the provision of medical care' in article 132(1)(c) were both intended to cover services

[1] Participants are only eligible for reimbursement if they have a Body Mass Index (BMI) of 30 or higher, or a BMI between 25 and 30 with a risk of cardiovascular disease or Type 2 diabetes.

[2] ECJ 10 June 2010, C-86/09 (Future Health Technologies), paragraph 30 and the case-law cited.

[3] ECJ 10 June 2010, C-86/09 (Future Health Technologies), paragraph 26, 27 and 36 and the case-law cited.

which had as their purpose the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders.[4]

– According to case-law, medical services effected for the purpose of protecting, including maintaining or restoring, human health could benefit from the exemption under article 132(1)(b) and (c) of the VAT Directive.[5]

– The CJEU has ruled that it should be borne in mind that, whilst 'medical care' and 'the provision of medical care' must have a therapeutic aim, it does not necessarily follow that the therapeutic purpose of a service must be confined within a particularly narrow compass.[6]

– Also medical services effected for prophylactic purposes may benefit from the exemption under article 132(1)(b) and (c) of the VAT Directive. Even in cases where it is clear that the persons who are the subject of examinations or other medical interventions of a prophylactic nature are not suffering from any disease or health disorder, the inclusion of those services within the meaning of 'provision of medical care' is consistent with the objective of reducing the cost of health care (which is common to both the exemption under article 132(1)(b) and that under (c) of the VAT Directive).[7]

– In ECJ 20 November 2003, C-307/01 (Peter d'Ambrumenil, Dispute Resolution Services Ltd), paragraph 57 and 59, the ECJ cites that in relation to the concept of provision of medical care, the concept does not lend itself to an interpretation which includes medical interventions carried out for a purpose other than that of diagnosing, treating and, in so far as possible, curing diseases or health disorders. Therefore, the purpose of medical services is decisive to answer the question whether or not a medical service is exempt from VAT. This is affirmed by the ECJ in paragraph 60.

– The ECJ has clarified that activities that do not appear to have as their direct purpose any actual diagnosis, treatment or cure of diseases or health disorders, or any actual protection, maintenance or restoration of health could not, by themselves, be regarded as being covered by the expressions 'hospital and medical care' in article 132(1)(b) of the VAT Directive, on the one hand, or 'medical care' in article 132(1)(c) of the VAT Directive, on the other.[8]

– The view that the actual purpose of the medical service is decisive for assessing whether "the provision of medical care" is at stake has been confirmed in ECJ 21 March 2013, C-91/12 (PFC Clinics). With respect to plastic surgery the ECJ elaborated that *"to treat or provide care for persons who, as a result of an illness, injury or a congenital physical impairment, are in need of plastic surgery or other cosmetic treatment may fall within the concept of 'medical care' in article 132(1)(b) of the VAT Directive and 'the provision of medical care' in article 132(1)(c) thereof*

4 ECJ 10 June 2010, C-86/09 (Future Health Technologies), paragraph 37 and 38 and the case-law cited.
5 ECJ 10 June 2010, C-86/09 (Future Health Technologies), paragraph 41 and 42 and the case-law cited.
6 ECJ 10 June 2010, C-86/09 (Future Health Technologies), paragraph 40 and the case-law cited.
7 ECJ 20 November 2003, C-212/01 (Margarete Unterpertinger), paragraph 40 and the case-law cited.
8 ECJ 10 June 2010, C-86/09 (Future Health Technologies), paragraph 43 and 44.

respectively. However, where the surgery is for purely cosmetic reasons it cannot be covered by that concept" (paragraph 29). This citation shows that the actual purpose of the provision of medical care is decisive to determine whether an activity falls within the scope of article 132(1)(b) and (c) of the VAT Directive.

– The Dutch Tax Authorities do not consider services provided within CLI-programmes to be "the provision of medical care" and therefore do not treat these services as falling within the scope of article 132(1)(b) and (c) of the VAT Directive. Services by a CLI-provider do not have as their purpose the therapeutic diagnosis, treatment and, in so far as possible, cure of diseases or health disorders. Their direct purpose is (advise and coaching on how) to structurally change a participant's behaviour and lifestyle.

– Even if services provided within CLI-programmes may be considered to be "the provision of medical care" in the broadest sense of the word, then still articles 132(1)(b) and (c) of the VAT Directive should not apply since this kind of care is not directly aimed at protecting, including maintaining or restoring human health in the context of diagnosing, treating and, in so far as possible, curing diseases or health disorders. The direct purpose of the CLI-programme is (advise and coaching on how) to realize behavioural change and a lifestyle change and with that prevention from illness and health care costs. Possible improvement of a participant's health is an effect of the behavioural change and a way to reduce health care costs, but it is not the direct therapeutic aim and context required for application of the exemption. The Dutch Tax Authorities considers the facts that a general practitioner refers a participant to the CLI-programme and/or the programme is eligible for reimbursement from the health insurance irrelevant for application of the VAT exemption.

– If, and insofar, the reference by a general practitioner and/or the reimbursement from the health insurance would be a decisive reason to apply the exemptions under article 132(1)(b) and (c) of the VAT Directive, the Dutch Tax Authorities foresee an issue with the principle of fiscal neutrality (i.e. the principle of equal treatment in the field of VAT).

– As for the principle of fiscal neutrality, it should be recalled that it precludes similar goods or services, which are in competition with each other being treated differently for VAT purposes.[9] In particular, the principle of fiscal neutrality, including equal treatment, precludes unequal VAT treatment of similar goods and services that compete with each other. The determination whether two supplies of services are similar has a broad range.

– Two supplies of services are therefore similar where they have similar characteristics and meet the same needs from the point of view of consumers i.e. the test should be whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one such service or the other.[10] CLI-programmes which are not eligible for reimbursement by the health insurance and other programmes of sport and nutrition coaching (that are similar to

9 ECJ 11 September 2014, C-219/13 (K Oy), paragraph 24 and the case-law cited.

10 ECJ 10 November 2011, C-259/10, C-260/10, (The Rank Group Plc), paragraph 44 and the case-law cited.

(components of) CLI-programmes covered by health insurances) should then also not be excluded from the VAT exemption for medical care. If so, the range of application of that VAT exemption will be quite broad and unforeseeable.

– Although CLI is connected with someone's health (care), the nature of the services rendered is more generally lifestyle coaching and as such comparable to other taxable coaching/training services.

5. Request for VAT Committee's opinion

The Netherlands requests the VAT Committee to express their opinion on the VAT rules applicable to so-called 'combined lifestyle intervention'.

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ANNEX 2

ELECTRONIC CORRESPONDENCE BETWEEN THE COMMISSION SERVICES AND THE NETHERLANDS

Commission: In addition, we have the following two questions in order to be able to analyse the scenario that you describe correctly:

It is not clear to us whether there are specific structures (such as wellbeing/sports centres or medical/paramedical centres or even hospitals) that provide the Combined Lifestyle Intervention (CLI) programmes. In other words, are there any CLI centres or can any e.g. lifestyle coach provide CLI services?

The Netherlands: *Under an acknowledged CLI-programme any person who meets the requirements of the CLI-programme can provide (components) of CLI. It is not necessary that such person is educated as a medical or paramedical practitioner.*

Commission: You mention that "A variety of professionals offers CLI, such as lifestyle coaches, dietitians, physiotherapists, (personal) sports trainers etc.". However, you do not specify whether there are any medical professionals amongst those, e.g. endocrinologists, psychiatrists, etc.

The Netherlands: *Since the aim of CLI is to reduce the use of traditional (expensive) forms of health care, in principle no medical practitioners (e.g. endocrinologists, psychiatrists, etc.) are actively involved in CLI-programmes and/or offering components of such a programme. However some life style coaches can be paramedical practitioners such as dieticians and physiotherapists.*