

Online medical consultations are not always exempt from VAT

Krzysztof Kościłcki

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The latest tax interpretation confirms that the VAT exemption may apply to services that are of a diagnostic or therapeutic nature. They must be used to prevent, preserve, save, restore and improve health. If the benefit consists of only providing certain advice, you will have to tax it. Therefore, the goal of the consultation counts.

The coronavirus outbreak has meant that many services are now being used in electronic, online form. Increasingly, this applies to medical consultations. In cases where it is not necessary to study in the office, you can talk to your doctor remotely, by phone or using various types of internet applications. However, the question arises whether online medical consultations via the internet should be exempt from VAT, as well as

stationary medical care services. This issue was the subject of interpretation of the director of the National Treasury Information of May 29 this year, No. 0114-KDIP4-2.4012.122.2020.3.KS .

Exemption only for certain medical services

The Treasury reminded that only medical care services for the prevention, preservation, rescue, restoration and improvement of health provided as part of the profession are exempt from VAT:

- doctor and dentist,
- nurse and midwife,
- medical,
- psychologist.

The condition for applying the VAT exemption is, therefore, a combination of two conditions. They result from art. 43 paragraph 1 point 19 of the VAT Act.

First , premises of a subject-related nature regarding the type of services rendered, i.e. medical care services for the prevention, preservation, rescue, restoration and improvement of health.

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Secondly , premises of a subjective nature, referring to the service provider, which must be a medical entity or a person practicing the profession of a doctor, dentist, nurse, midwife, psychologist or other medical profession within the meaning of art. 2 clause 1 point 2 of the Act on medical activities.

Read in LEX: Definition of medical profession>

It means a person authorized under separate provisions to provide health services and a person possessing the acquisition of professional qualifications to provide health services in a specific scope or in a specific field of medicine.

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The purpose of the medical service counts

The tax authority emphasized that to determine the right to be exempt from VAT, it is fundamental to examine the purpose of a given service to the patient. The Treasury pointed out that not all medical services undertaken for the patient are aimed at preserving, saving, restoring and improving his health. **This causes some complications and interpretation problems. Especially since the definition of medical care was not included in national or Community tax regulations.**

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Medical care and medical care benefits have been defined by the Court of Justice of the European Union on several occasions. It is apparent from the judgment in Case C-106/5 that these terms refer to services which serve the purpose of diagnosis, care and, as far as possible, treatment of diseases or health disorders. The director of KIS therefore stated that it is the purpose of the medical service that determines whether it should benefit from the exemption. If the context implies that its primary purpose is not to protect health, including maintaining or restoring it, but rather to provide advice required before a decision with legal consequences is taken, then the dismissal will not apply. In the opinion of the treasury, in order to be subject to exemption, the benefit should have a therapeutic purpose. So if the primary purpose of the service is not diagnosis, care,

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Form of communication between the doctor and the patient, irrelevant to VAT

Sylwia Lubelczyk, a legal advisor from the VAT proceedings team at GWW, confirms that the right to benefit from VAT exemption therefore depends on the purpose of the service provided to the patient. It points out that the type of means of communication by which a given medical consultation is given does not prejudice the exemption from VAT. – The online platform is only a tool that can be used to provide a service aimed at preserving, saving, restoring and improving the health of patients – indicates the expert.

Read in LEX: Medical packages and value added tax>

So, regardless of whether the medical consultation will be provided online or stationary, it must be provided by a doctor, dentist, nurse, midwife, person of another medical profession or psychologist to be subject to VAT exemption.

As the expert adds, to prove the right to dismissal, it is always important to document that the medical consultation – although it was provided online – was individualized and directed to a specific patient, and was not only a general answer to questions in the field of medicine. It must also be proven that its purpose was to provide the patient with a diagnosis, to provide medical assistance and, to the extent possible, to treat

illnesses or health disorders.

Read in LEX: Medical services and value added tax on examples>

Changing the treasury approach

Robert Smoczyński, legal advisor, partner at TLA, emphasizes that the method of communication used to provide services cannot be a circumstance excluding a given service from the group of those exempt from VAT. However, the expert reminds that earlier interpretations of tax authorities have not always confirmed the right to exempt online medical services. For example, the director of the Tax Chamber in Łódź in an individual interpretation of August 11, 2015, No. IPTPP1 / 4512-263 / 15-4 / IG , acknowledged (**despite the courts have stated otherwise**) that you cannot provide medical care services without careful examination of the person, their observation and care over them in the process of medical activities, and this – according to the director there are basic conditions defining these services.