



European Commission
Directorate-General
Taxation and Customs Union
Indirect Taxation and Tax administration, VAT

Att. Donato Raponi

Klik og vælg dato
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Ministry of Taxation
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Question concerning the application of EU VAT provision

Dear Mr. Raponi,

With reference to the correspondence between the Danish Ministry of Taxation and the Commission (exchange of letters is enclosed for information purposes) the Ministry gladly accepts the Commissions offer to raise the issue under the auspices of the VAT Committee.

The Danish Ministry of Taxation is in general of the opinion that the conditions for the VAT exemptions of medical services as developed in Danish case law have resulted in an arbitrary practice by which fertility treatment can or can not be exempt from VAT. It is of our greatest interest to consider the possibility to implement changes to the interpretation formed by Danish case law in order to make fertility treatment VAT-exempt as a general measure.

The Danish Ministry of Taxation therefore asks for an assessment of to what extent the scope of the exemption of medical services in Article 132 (1) (b) and (c) of Council Directive 2006/112/EC — the EU's common system of value added tax (VAT) covers assisted reproduction. In particular the following question should be raised:

Is fertility treatment performed on a single woman or women living in a homosexual relationship, where the woman receiving the treatment has no indication of a disease or health irregularity covered by the VAT exemption?

Opinion of the Danish Ministry of Taxation

Pursuant to Danish case law, assisted reproduction is currently exempted as a health service if the woman receiving the treatment has an indication of reduced fertility. The treatment must accordingly refer to a medical assessment showing that the woman receiving the treatment has in fact an indication of reduced fertility. Since the VAT exemption for medical services is conditional on the existence of an indicator of infertility related to the person receiving the treatment (i.e. the woman), the treatment of heterosexual couples, where it is found that the man is the reason for the need of assisted reproduction, is not covered by the VAT exemption.

The Commission has informed The Danish Ministry of Taxation that they are of the opinion that dependent on the facts of the individual case – there can be a sufficient link between fertility treatment and a health disorder even if the infertility/reduced fertility is solved by treating the 'healthy' partner. In such a case the treatment is carried out because one of the partners who want to have a child together suffers from infertility/reduced fertility. The unfulfilled wish for a child of the couple is the result of this health disorder.

der/disease. This negative consequence can be alleviated by the fertility treatment of one of the partners.

The Danish Ministry of Taxation agrees with the assessment given by the Commission. Based on the communication from the Commission the Danish practice concerning the exemption for medical care will be amended to also cover treatment of reduced fertility in the case where only one of the partners in a relationship suffers from infertility/reduced fertility.

In relation to fertility treatments performed on single women or women living in a homosexual relationship, where the woman receiving the treatment has no indications of a disease or a health irregularity, it is unclear whether or not the treatment is covered by the VAT exemption.

As mentioned by the Commission the ECJ, has clarified that medical services effected for a purpose other than that of protecting, including maintaining or restoring, human health may not benefit from the exemptions under Article 132(1)(b) and (c). The fertility treatment of a single woman or a woman in a homosexual relationship would not be connected to a disease/health disorder or to the protection of human health (preventive measures) within this meaning. A causal connection in this regard would be missing, unlike the case of a heterosexual couple. On the other hand, the ECJ has clarified that the therapeutic purpose of the medical care should not necessarily be interpreted narrowly. However, the Commission has doubts whether the therapeutic purpose of enabling a pregnancy without any connection to a disease/health disorder or the protection of health is sufficient for treatment to be covered by the VAT exemptions in question. The requirement of strict interpretation could speak against this.

The Danish Ministry of Taxation is of the opinion that fertility treatment should be exempt from VAT as a general measure. We agree with the Commission, that the aim of the exemption is connected to a person being treated for a disease/health disorder and it is not decisive whether the treatment is performed on a man, a woman, a heterosexual or a homosexual couple. The Danish Ministry of Taxation is of the opinion that everyone should have access to fertility treatment exempt from VAT. This position may also be considered to be consistent with rules on equality and human rights. Given the uncertainty related to this question we would appreciate if the issue could be raised in the VAT Committee.

Yours sincerely

Jeanette Rose Hansen