

The hindering effect of EU VAT on the access to health care

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Valorization addendum

1. Societal and economic relevance

In this research I addressed the question how the application of positive EU VAT law on health care transactions impedes the principle of access to health care. So far, no extensive research has been conducted on the interaction between the application of positive EU VAT law and the access to health care. In my view, the growing importance and recognition of the principle of access to health care on an EU level as a value for designing and improving health care systems on the one hand and CJEU case law on the application of positive EU VAT law on health care transactions on the other hand, demand for such research.

The societal relevance of the research output on EU level is also demonstrated by the fact that the EU health ministers recognized access to health as one of the overarching values of EU health care systems. Unlike the EU VAT system, health care systems are a national matter. Consequently, their design and funding structure differ per Member State. The EU health care systems, however, increasingly interact with each other, *inter alia* as a result of increased patient mobility and mobility of health care professionals.

The research output is also of economical relevance. It is relevant in the light of discussions on the increased health care spending in the EU. Over the last 20 years, the average annual growth of health spending exceeded the GDP growth in all OECD countries. It is therefore in the common interest of countries to improve the fiscal sustainability of health care. The OECD has indicated that 'distortionary costs' of taxes have to be taken into account in economic policy discussions on the financing of public services.⁶⁴⁸ I demonstrated in my research the hindering effect of the application of EU VAT and how and to what extent this hindering effect occurs in specific situations. These findings provide for insights on the occurrence of distortionary costs as a result of the application of positive EU VAT law. These insights are not only useful as regards economic policy discussions on the financing of the health care sector, but also as regards the financing of other (public) sectors, i.e. the education sector as this sector is confronted with similar EU VAT rules and is by its nature also predominantly financed with public funds.

2. To whom are the research results of interest and why?

As indicated under 1, the research outcome is not only of interest for persons or groups involved in tax law, but also for those involved in health care. In the first place the research output is relevant to EU and national policymakers in the field of tax law, for this research demonstrated that the principle of access to health care serves as a valid standard for the application of positive EU VAT law. Furthermore, it became obvious that a possible

⁶⁴⁸ See section 2.2.1.1.

impediment of the accessibility to health care cannot be ignored while drafting and proposing new regulations in the field of EU VAT. Therefore, the research outcome is also relevant for legislative bodies in the field of taxation on an EU and national level. I explored alternative ways to apply EU VAT on health care transactions, while mitigating the hindering effect on the access to health care.

Also, for policymakers and legislative bodies in the field of health care, the research output is relevant. As indicated under 1., the accessibility of health care is explicitly recognized by the health ministers of the EU as one of the overarching values of EU health care systems, that have to be taken into account while drafting proposals concerning health systems. Furthermore, as was demonstrated in this research, the application of EU VAT on health care transactions brings along side effects, possibly causing distortionary costs. Knowledge on the occurrence of these distortionary cost is interesting for research and discussions in the field of fiscal sustainability of health systems, which has gained more importance in the EU as a result of the exceeded spending on health (see also under 1.).

Besides policymakers and legislative bodies, the research outcome is relevant to a number of other groups. It is useful to students and researchers involved in EU VAT law, as this thesis provides for insights on the scope and application of positive EU VAT law in relation to health care transactions in various specific situations. These situations have been divided in three main categories in which health care may be provided: *basic situations*, *parallel situations* and *successive situations*. The thesis contains a schematic overview containing the criteria for assessment of VAT exemptions for health care per situation.⁶⁴⁹ The insights mentioned above may also be useful to health care practitioners and their advisors. It may for example help them to possibly structure health care transactions in such a way that distortionary costs as a result of the application of positive EU VAT law are reduced or avoided.

Finally, the research output certainly forms a basis for further research for researchers in the field of EU VAT as well as economics. Despite the fact that this research mainly focusses on the legal and practical results of the application of legislation and only takes into account budgetary effects to a very limited extent, it will be of interest to those involved in quantitative research. In this thesis, concrete suggestions are made for alternative provisions in the EU VAT system that require further (quantitative) research.

3. Into which concrete activities, products, services and processes or commercial activities will the research results be translated and shaped?

The research output may contribute or lead to new proposals in relation to the VAT treatment of health care transactions, or more general, the VAT treatment of public sector bodies. In its 2010 'Green Paper', the European Commission already acknowledged the differential treatment of public sector bodies (i.e. health care providers) as one of the

⁶⁴⁹ See section 7.5.9.

shortcomings of the current EU VAT system.⁶⁵⁰ The conclusions of the public consultation, initiated by the Green Paper, have led to a careful consideration of a gradual phasing out of existing VAT exemptions. Still, up until this point no concrete changes to the EU VAT treatment of public sector bodies have been presented.

As was set out above, the thesis contains a schematic overview containing criteria for the assessment of VAT exemptions for health care in various specific situations. The distinction of specific types of situations in which health care transactions may be provided for the purpose of the application of positive EU VAT law is innovative. It may serve as a tool to come to a consistent application of the provisions of the EU VAT Directive, as well as doctrines that have been developed in CJEU case law, i.e. the doctrine of composite supplies. By this means it may lead to new CJEU case law on the interpretation of EU VAT in relation to health care transactions. For the same reasons, the research output may also serve as a basis for litigation strategies.

Furthermore, after my public defence, I aim to have the thesis published by an internationally operating publisher. This allows to distribute the research output amongst the target groups that have been discussed above.

4. To what degree can the research results be called innovative in respect to the existing range of products, services, processes, activities and commercial activities?

As indicated under 1., up until now no extensive research has been conducted on the interaction between the application of positive EU VAT law and the access to health care. It is the first research in the field of VAT in which parallels are drawn between the interpretation of VAT exemption provisions for health care and the human right to health. I demonstrated that the principle of access to health care cannot be denied in relation to the interpretation and application of positive EU VAT law. Furthermore, this research has led to new insights on how the application of positive EU VAT law impedes the access to health care, as well as the specific situations in which this impediment occurs. These situations have as such not been distinguished and compared before. One of the important findings of the research in this regard is that the application of positive EU VAT law on health care transactions may lead to a deviating VAT treatment of health care transactions, depending on the kind of situation in which they are provided, i.e. ‘basic situations’, ‘parallel situations’ and ‘successive situations’. What is particularly innovative in this research is that specific attention has been paid to the concurrence between the application of the doctrine of composite supplies and the interpretation of the notion of ‘closely related activities’ in relation to health care transactions.

⁶⁵⁰ See section 6.1.2.

5. How will this/these plan(s) for valorization be shaped?

With the output of this research as basis, I am able to conduct further research on the EU VAT treatment of public sector bodies in general and elaborate on specific aspects of that treatment. The output of further research may result in scientific publications. Moreover, as indicated above, I aim to have the thesis published by an internationally operating publisher. This allows to distribute the research output amongst the target groups and contributes to a wide spread and acceptance of the research output. My continued active involvement in research, education and practice contributes to a wide spread and acceptance of the research output as well and enables the research output to be further developed.