

Is horse race prize money treated as consideration for taxable services? 3/8/23



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A payment is not always treated as a consideration for services that are subject to VAT. To establish a taxable supply, there must be a direct link between the service and the consideration received for it. There is no direct link between a payment and the service if it is impossible to predict whether the consideration will be received. In its ruling C-713/21 (*Finanzamt X*) of 9 February 2023, the Court of Justice of the European Union (CJEU) assessed whether 50% of horse race cash prizes that is assigned to a stable owner should be treated as a consideration for a service chargeable to VAT. This article explores some of the legal niceties examined in the CJEU's new ruling.

CJEU rulings

The CJEU has heard a number of cases involving prize money won in horse races. For example, the CJEU assessed¹ whether a horse owner (a taxable person) who makes his horse available to a race organiser for participation in the race is making a taxable supply. The CJEU finds that no service for a consideration can be established in this case because the fee, even if agreed in advance, is not paid for participation in races as such, and the fee is received only by the owners of horses that are placed in the race. Making a horse available to the race organiser would be a supply of services for a consideration if the organiser paid a consideration that is not dependent on the horse being placed in the race.

In case C-713/21 a competition horse rider and stable owner had a dispute with the German tax authority over whether half of prize money won in competitions is part of the consideration for the stable owner's service.

The stable owner had entered into contracts with horse owners under which they made their horses available to the stable owner. The horses were kept and trained at the stable, and the stable owner entered them in competitions in Germany and abroad. The contract required the horse owner to bear the maintenance, competition, transport, farrier and veterinarian costs for the horse. Since the prize money won in competitions belongs to the horse owner, the contracts stated that the horse owner assigns half of all future cash prizes to the stable owner.

In assessing this situation, the CJEU emphasises that services are supplied for a consideration only if there is a legal relationship between the supplier and the customer with reciprocal performance and the payment received by the supplier is the actual consideration for an identifiable service supplied to the customer.

In this situation the CJEU evaluated the fact that the contractual right to claim half of prize money represents the consideration for the stable owner's service. Although winning prize money is accidental in nature, the fact that the stable owner is entitled to a half has been agreed in advance and is invariably known. Failure to win a prize in the event of the horse performing unsuccessfully did not affect the agreement that guarantees the entitlement to half of the prize.

This means that the contractual right to claim half of the prize money in itself is a consideration for the

stable owner's service. This CJEU ruling again shows that details of a transaction make a difference to its VAT treatment.

¹ Ruling C-432/15 (*Pavlína Baštová*) of 10 November 2016