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German Experience of VAT in relation to Charities

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Part I: Some Basic Principles of German VAT Law

- I. Taxable person: entrepreneur, § 2 (1) UStG
=> "sphere theory"
- II. Reciprocal performance
=> problem area: membership fees
=> problem area: sponsoring
- III. Tax exemptions
 - hospitals and nursing homes (§ 4 No. 16 UStG)
 - "officially approved" welfare associations and member associations (§ 4 No. 18 UStG)
 - cultural facilities (§ 4 No. 20 UStG)
 - sporting events - insofar as the consideration consists in participation fees - (§ 4 No. 22 b UStG)
 - youth welfare (§ 4 No. 24, 25 UStG)
- IV. Tax reduction for charities, § 12 (2) No. 8 a UStG
=> applies for services not relating to a "business unit"

Part II: Problem Areas

- I. *Membership fees*
 1. Traditional German view
=> distinction between
 - "real" membership fees
 - "alleged" membership fees
 2. European Court of Justice: "Kennemer Golf & Country Club", 21 March 2002
=> reciprocal performance between a sports club and its members
 3. Legal uncertainty for membership charities
=> legislation and fiscal authorities have not reacted to the judgment
=> no broad tax exempt rule for transactions between charities and their members
=> direct application of Art. 13 (1) (l), (m) of the EC Sixth VAT directive?

II. Sponsoring

1. Basic taxation rules

- monetary donation; no consideration: no VAT taxation
- monetary donation/donation in kind; advertising services as consideration: VAT taxation, but varying tax rate:
 - mere toleration of advertising activities carried out by the sponsor: related to the charities' asset management; reduced tax rate of 7 % applies (§ 12 (2) No. 8 a UStG)
 - active conduct of, or participation in, advertising activities: related to a business unit; regular tax rate of 16 % applies

2. Demarcation problems

- expression of gratitude in public
- placement of the sponsor's name and logo on the charities' website
- use of a donated object in public
