

The Legal Research Methodology as a Method for Researching in Business Area: A Case Study Applied to Gymnasiums

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Abstract: Purpose – The main objective of this paper is to understand how the analysis of laws and jurisprudence influences the decisions of gym managers in Portugal. Design/methodology/approach – For this purpose, the Portuguese tax law was investigated, particularly the Value Added Tax law and additional legal dispositions. It also researches the arbitral case law related to nutrition consulting in sports activity companies. Findings – The nutrition consultation is considered a medical act subject to the legal disposition of article 9º of the Value Added Tax Code, which means that when the medical service is provided by a professional, the beneficiary of the services can benefit from the VAT exemption. This disposition observes the European Union Directive 2006/112/EC of the European Council. Nevertheless, when a nutritionist provides these services through an entity that offers sports activities like gyms, some doubts are raised because it can be considered that nutritional monitoring has no therapeutic purpose. Customers could not benefit from the VAT exemption if some conditions were not observed. The arbitral tax court has been considering that it needs to keep some requirements for that exemption could be applied to the gym services. In several cases, fulfilling the conditions is complex and generates litigation between the Portuguese Tax Authority and gyms. In the personal sphere, there are two possibilities for the service's recognition i) if the service is recognized as a consultation, it could benefit as a medical expense in the personal income tax statement; ii) if it is not considered as a medical expense, each person can deduct 15% of the VAT in the same statement. Originality: This paper demonstrates the role that court rulings play in clarifying day-to-day issues for managers. It also shows that laws and court rulings are an essential source of data in management research. Research limitations/implications – This study only analyses the Portuguese case, it could be interesting to study other countries that do not apply the value-added tax law.

Keywords: Gyms, Nutrition consulting, Portugal, Tax arbitration, Tax law, Case law based research

1. Introduction

Nowadays, people pay attention to eating and sporting habits (Gieniusz-Wojczyk, Dabek, & Kulik, 2021). In consequence, nutritional and sports services gain new users every day, which is verifiable not only in the male user but also the female (de Araujo et al., 2019). Traditionally, women pay more attention to their physical and dietary health, but men have also focused their interest on this matter (Rahmawati, Willcox, van der Pligt, & Worsley, 2021; Rustad & Smith, 2013).

In this context, it is essential to understand how the Portuguese legislature has framed the nutritional services gyms provide to users of sports academies and whether this treatment generates conflict between the service providers and the tax authority. As far as it is possible, this study has yet to be carried out concerning the Portuguese case. To this end, the study applies the legal research methodology (Epstein & King, 2002), analysing data relevant to achieving the objectives. The following data were investigated: The Value Added Tax law, sentences of the Portuguese arbitration court - CAAD, and other related legal provisions. The paper aims to understand the taxation related to gyms' nutrition services to Portuguese people. In addition, to study if this topic is a source of litigation between companies and Portuguese tax authorities.

This research comprises five sections: first, the introduction, where a general framework of the topic is made, the study's objective is presented and the methodology collected for this purpose. Second, the literature chapter, where concepts related to the case are explained. Thirdly, the methods and the selection of the sample of court sentences. After that, it presents the results, namely, the legal framework of nutrition consultations and an analysis of the CAAD sentences related to the theme. Finally, the conclusions of the study.

2. Literature Review

The Order of Nutritionists argues that the VAT exemption should cover nutrition consultations provided in establishments intended for physical exercise and sport.

"The nutritionist is a health professional, regardless of where he is carrying out his professional activity," says the president, Alexandra Bento. Recalling that "the professional practice of the nutritionist in the nutrition consultation always has a therapeutic purpose, so that we do not accept different tax treatment in an activity that can only be understood, in all cases, as therapy."

The statement follows what the Order considers an "ambiguous decision" by the Supreme Administrative Court, which concludes that gyms that provide nutrition consultations to their customers can bill separately and apply the VAT exemption to them. However, only if the service has therapeutic purposes must the situation be evaluated on a case-by-case basis. However, if nutrition is an ancillary provision of gym services, it must be taxed in the same way, at a rate of 23%.

The Order of Nutritionists considers that the nutritionist's professional practice in nutrition consultation always has a therapeutic purpose, whether in the context of disease prevention and health promotion or the treatment of a disease, regardless of where it operates and its context.

There are more than 4 thousand members; at least 5% of nutritionists work in gyms, and there has been an increase in the integration of these professionals in establishments dedicated to physical exercise.

In this regard, in 2019, the Order of Nutritionists launched a Professional Guidance Standard (NOP) that regulates the activity of nutritionists in establishments dedicated to physical exercise and sports. Rules can be highlighted, such as the consultation must be carried out in an office that guarantees privacy and the obligatory availability of equipment that allows a correct nutritional assessment.

Remember that, for the Order, it is essential that nutritionists are in places where their presence impacts the health of citizens, whether in schools, primary health care, pharmacies, gyms, or other locations.

3. Methodology

Legal research is an appropriate method in the tax field, as it helps researchers gather the information and resources needed to properly understand and address legal issues (Zalcmane, Kamenecka-Usova, & Bickovskis, 2021). This can involve researching statutes, regulations, case law, and other legal sources such as treatises and legal commentary (Chacha, Ramos, & Sanchez, 2021). In addition to helping scholars understand the relevant laws and legal principles, legal research can also help them identify potential arguments and strategies for handling a case (Ismail, Mustafa, & Jalil, 2019).

The paper aims to understand the taxation related to the nutrition services gyms provide to Portuguese people. Additionally, to study if this topic is a source of litigation between gyms and tax authorities. They studied the Value-Added tax law and Portugal's arbitral court case law to achieve these goals.

The court website was accessed to collect court cases related to the topic and the judgments identified¹. A search was made in the "theme" field using the word "nutrition," and in the kind of taxes, it was selected "IVA (Imposto Sobre o Valor Acrescentado)." This search identified 58 lawsuits related to nutrition services provided by gymnasium companies.

4. Results

4.1 Tax law Framework

Article 9 of the VAT code refers to VAT exemption on internal transactions; this means that certain professional activities are exempt from paying VAT to the State on services performed (Nabais, 2021). This exemption is independent of turnover, contrary to article 53 of the same code, which states an exemption to companies than have annual sales until 12 500€ (Catarino & Guimarães, 2021).

However, regardless of the turnover mentioned in article 53 of the VAT Code, article 9 of the VAT code lists the internal operations that are exempt from VAT (Lima, 2003), in this specific case of nutrition consultations and through article 9 n 1, which says: 1) The provision of services carried out in the exercise of the medical

¹<https://caad.org.pt/tributario/decisoaes/>

professions, In particular, the works of a doctor, dentist, midwife, nurse, and other paramedical professions are exempt from tax.

Given that no concept in CIVA defines paramedical activities, it is necessary to resort to Decree-Law no. of August 11 (both from the Ministry of Health) since these two diplomas contain the requirements to be observed for the exercise of the respective activities. No. 3 of article 1 of Decree-Law no. 261/93, of 24 July, determines that paramedical activities are those contained in the list attached to the diploma as mentioned above, of which it is an integral part, and comprise the use of science-based techniques for health promotion and prevention, diagnosis and treatment of disease, or rehabilitation. It is also an essential condition for the exercise of these professional health activities and a determining factor for granting the exemption provided for in paragraph 1) of article 9 of the CIVA, the verification of certain conditions, namely the ownership of a course, obtained under the terms of the article 4 of Decree-Law no. 320/99, of 11 August.

The list attached to Decree-Law No. 261/93 of July 24, provides the activity of dietetics and physiotherapy in its items 5 and 7. This legal disposition clarifies the concept of dietetics as the application of nutrition and dietetics knowledge in general health and the education of groups and individuals, whether in a situation of well-being or illness, namely in the promotion and treatment and management of food resources.

Additionally, it defines physiotherapy as an activity that focuses on the analysis and evaluation of movement and posture based on the structure and function of the body, using specific educational and therapeutic modalities, essentially based on training, manipulative therapies, and physical and natural means, to promote health and preventing illness, disability, disability, and maladjustment and treat, enabling or rehabilitating individuals with physical, mental, developmental or other disorders, including pain, to help them achieve maximum functionality and quality of life.

According to the description provided therein, this activity comprises the "Application of knowledge of nutrition and dietetics in general health and the education of groups and individuals, whether in a situation of well-being or illness, namely in the field of promotion and treatment and the management of food resources." The activity of a nutritionist falls within the description foreseen for the exercise of the movement of "dietetics" expected in the Decrees Law above. For this reason, the AT has understood that the provision of services carried out by nutritionists may be covered by the exemption provided for in paragraph 1) of article 9 of the CIVA, provided that the conditions listed in the said diplomas are met and referred to operations covered by item 5 of the annex to Decree-Law no. 261/93.

In this assumption, the services provided by dieticians and nutritionists, whether offered directly to the user or provided to any entity with whom they contract their services, are covered by the exemption provided for in paragraph 1) of article 9 of the CIVA. This exemption refers to the objective exercise of the activities and not the legal form that characterizes it. Thus making, the action making theed are exempt even if carried out within the scope of the companies. Such an understanding stems from the interpretation of this legal provision by the Court of Justice of the European Union (CJEU), namely in the Judgment of September 10, 2002, issued in the context of case C-141/00 (Kugler case, ECR I-6833, n.º 26), which summarizes the objective character of the exemption in fulfilling two conditions: it is medical or paramedical services and that these are provided by people who have the required professional qualifications.

In this way, the provision of nutrition and physiotherapy services that may be carried out by the gym, which are billed directly to users, may benefit from the exemption provided for in paragraph 1) of article 9 of the CIVA, provided that they are ensured by professionals (dietitians, nutritionists, and physiotherapists) qualified to carry out this activity, under the terms of the applicable legislation. In this case, the invoices to be issued to users must contain a reference to the exemption above.

About the VAT rate to be applied in nutrition consultations, more is needed to indicate it separately on the invoice; they must be operations capable of disaggregating. For example, suppose the gym charges a single fee for access to the gym, giving the customer the possibility of accessing nutrition consultations. In that case, this is a one-off operation, with a VAT rate of 23 percent applicable. Suppose the acquisition of nutrition consultations can be made separately from the amount charged for access to the gym, with separate actions; these two services are provided in the invoice. In that case, the nutrition consultation may be exempt if the conditions described above are verified.

From the point of view of the customer who pays for the gym, this can, as provided for in article 78-F, n1 - Deductions due to invoice requirements: An amount corresponding to 15% of the VAT paid by any member of the household, with a global limit of €250 per household, which appears on invoices that certify the provision of

services communicated to the Tax and Customs Authority under the terms of Decree-Law No. 198/2012, of 24 August, or issued on the Finance Portal, under subparagraph a) of paragraph 1 of article 115, by issuers who are classified, by the Portuguese Classification of Economic Activities, Revision 3 (CAE – Rev. 3), approved by Decree-Law No. 381/2007, of November 14, in the following sectors of activity: f) Section P, class 85510 (Sports and recreational education) and Section R class 93120 (Activities of sports clubs) and 93130 (gym activities – fitness).”

4.2 Case law tax Portuguese tax Arbitration

The Portuguese Legal regime of Arbitration in Tax Matters allows disputes related to taxes to be resolved through arbitration (Villa-Lobos & Pereira, 2015) rather than through the traditional judicial system. This can be a valuable option for businesses and individuals who want to resolve tax disputes more efficiently and cost-effectively. It's important to note that not all tax disputes are eligible for arbitration, and some arguments may need to be resolved through the judicial system (Villa-Lobos & Pereira, 2015). In this search, they were identified 58 legal processes related to nutrition services provided in gymnasium companies in value-added tax matters. The following table shows the cases clarified by the Portuguese Tax Arbitration Regime – CAAD.

	Process	Decision date	Types of Tax	Theme
1	626/2021-T	10/24/2022	VAT	VAT - Provision of Nutrition Services - Accessory - Gym Services.
2	599/2021-T	11/7/2022	VAT	VAT - Provision of Nutrition and Fitness Services - Exemption - Article 9, al. 1) CIVA.
3	379/2021-T	2/22/2022	VAT	VAT - Gyms. Nutritional consultations. Exemption. Ancillary services. CJEU case law.
4	365/2021-T	6/27/2022	VAT	VAT - Gymnasiums; Nutrition Consultations; Exemption; Article 9 CIVA
5	320/2021-T	1/31/2022	VAT	VAT - VAT, Gymnasiums. Nutrition consultations.
6	319/2021-T	11/25/2021	VAT	VAT, gyms. Nutrition consultations. Lack of registration with the Health Regulatory Authority. Absence of proof of nutrition services.
7	256/2021-T	2/15/2022	VAT	VAT - Provision of Nutrition Services in a Gymnasium; Assessment of the legality of acts in the light of their reasoning; a posteriori reasoning.
8	66/2021-T	5/9/2022	VAT	VAT - Provision of Nutrition Services - Exemption - Art. 9, 1) CIVA
9	43/2021-T	11/5/2021	VAT	VAT, Gymnasiums. Nutrition Consultations. Lack of registration with the Health Regulatory Authority. Absence of proof of nutrition services.
10	668/2020-T	7/2/2021	VAT	VAT, Gymnasiums. Nutrition Consultations. Lack of registration with the Health Regulatory Authority. Absence of proof of nutrition services.
11	599/2020-T	9/16/2021	VAT	VAT - Gyms. Nutritional consultations. Exemption. Ancillary services. CJEU Case Law. Scope of the arbitration proceedings
12	593/2020-T	9/13/2021	VAT	VAT treatment of nutrition services provided in a gymnasium context. (In)applicability of the exemption in Article 9(1) of the VAT Code.
13	571/2020-T	9/7/2021	VAT	VAT - Gymnasiums; nutrition services/consultations; exemption. Article 9, 1) of the VAT Code.
14	563/2020-T	6/30/2021	VAT	VAT. Gymnasiums. Nutrition consultations. Taxable amount.
15	562/2020-T	11/20/2021	VAT	VAT - Gymnasiums - Nutrition services
16	551/2020-T	7/16/2021	VAT	VAT - Gymnasiums - Nutrition services - "Packages" of services
17	549/2020-T	7/20/2021	VAT	VAT - Gymnasiums - Nutrition services - "Packages" of services.
18	519/2020-T	9/16/2021	VAT	VAT. Gymnasiums. Nutritional consultations. Exemption. Ancillary services. CJEU Case Law. Scope of the arbitration proceedings
19	477/2020-T	9/21/2021	VAT	VAT - Provision of Nutrition Services - Exemption - Article 9, 1) of the CIVA

20	442/2020-T	5/31/2021	VAT	VAT - Article 9.1 of the VAT Code (exemption - Nutrition Services) IRC - Article 23 - Costs Accepted for Tax Purposes; Burden of Proof; Unnecessary Prejudicial Relief
21	426/2020-T	11/30/2021	VAT	VAT - Exemption provided for in Article 9(1) of the VAT Code. Gymnasiums - Nutrition services.
22	408/2020-T	5/21/2021	VAT	VAT. Gymnasiums. Nutritional consultations. Exemption. Ancillary services
23	404/2020-T	5/10/2021	VAT	VAT. Gymnasiums. Nutritional consultations. Exemption. Ancillary services
24	399/2020-T	5/14/2021	VAT	VAT. Gymnasiums. Nutritional consultations. Exemption. Ancillary services. Lack of good faith
25	395/2020-T	5/18/2021	VAT	VAT. Gymnasiums. Nutritional consultations. Exemption. Supplementary services
26	380/2020-T	6/18/2021	VAT	VAT - Provision of Nutrition Services - Exemption and Accessory - Article 9, 1) of the CIVA
27	372/2020-T	4/26/2021	VAT	VAT - Gymnasiums; Nutrition Consultations.
28	335/2020-T	8/31/2021	VAT	VAT - Provision of Nutrition and Insurance Services - Exemption - Art. 9, 1) and 28) of the CIVA - Judgement of the TJ C-581/19.
29	244/2020-T	7/19/2021	VAT	VAT - Supplies of nutrition and physiotherapy services; therapeutic purpose; Article 132(1)(c) of the VAT Directive: CJEU judgment of 4.3.20121, Case C-581/19.
30	236/2020-T	3/1/2021	VAT	VAT - Provision of physiotherapy and nutrition services - Exemption - Article 9(1) of the VAT Code; Reference for a preliminary ruling
31	196/2020-T	11/12/2020	VAT	VAT - Nutrition Services - Gym.
32	179/2020-T	1/29/2021	VAT	VAT-Gymnasiums; Nutritional consultations; Exemption (Article 9(1) of the VAT Code); No need for a preliminary ruling.
33	152/2020-T	6/18/2021	VAT	VAT - Gymnasiums; Nutrition Consultations.
34	137/2020-T	6/6/2021	VAT	VAT - Provision of Nutrition Services - Exemption - Article 9, no. 1) of the CIVA. Dismissal of the application for an order for costs in part
35	116/2020-T	5/19/2021	VAT	VAT - Gymnasiums; nutrition services; exemption. Article 9, 1), of the CIVA.
36	87/2020-T	11/20/2020	VAT	VAT - Gymnasiums; Nutrition consultations; Exemption; Life insurance.
37	870/2019-T	6/5/2021	VAT	VAT - Gymnasiums - Nutrition Consultations
38	807/2019-T	5/29/2021	VAT	VAT - Gymnasiums - Nutrition Consultations
39	760/2019-T	8/31/2020	VAT	VAT - Provision of nutrition services - Exemption - Art. 9, 1) of the CIVA. Prejudicial remittance; Compensation for undue guarantee;
40	740/2019-T	9/5/2020	VAT	VAT - Gymnasiums; nutrition consultations; exemption of art. 9, 1) of the VAT Code; critical information.
41	727/2019-T	7/16/2020	VAT	VAT - Gymnasiums, Nutrition Consultations; Exemption.
42	695/2019-T	11/29/2020	VAT	VAT - Provision of Nutrition Services - Exemption - Article 9, no. 1) of the CIVA.
43	693/2019-T	7/28/2021	VAT	VAT - Right to deduct; Gymnasiums; Nutrition Consultations
44	544/2019-T	4/23/2020	VAT	VAT - Provision of nutrition services - Exemption - Art. 9, 1) of the CIVA. Prejudicial remittance; Compensation for undue guarantee.
45	356/2019-T	5/22/2021	VAT	VAT - Provision of nutrition services - exemption. Reference for a preliminary ruling. Lack of jurisdiction of the Court to examine applications for annulment or termination of tax enforcement proceedings and administrative offense proceedings

46	264/2019-T	5/29/2020	VAT	VAT - Services Rendered; Nutrition in Gymnasiums; Exemption of Article 9, 1) of the VAT Code; Strict interpretation; Unique economic operation composed of several elements.
47	181/2019-T	11/27/2019	VAT	VAT - Gymnasiums; Nutrition Consultations; Exemption; No need for a preliminary reference; Deduction; Article 19(3) of the CIVA. Appeal for revision of arbitral award. International appeal instance. Arbitral Award (annexed to the Decision).
48	174/2019-T	1/21/2020	VAT	VAT - Partial Material Lack of Jurisdiction - Fines; Provision of Nutrition Services; Exemption; Art. 9, 1) of the CIVA; Nonancillary nature of the transactions - Distinct taxable persons; fitness and nutrition package - gyms/health clubs; No need for a Reference for a Preliminary Ruling.
49	170/2019-T	3/5/2020	VAT	VAT - Provision of Nutrition Services - Exemption - Art. 9, 1) of the VAT Code.
50	169/2019-T	11/6/2019	VAT	VAT - Gymnasiums; Nutritional Consultations; Exemption; Exemption from Reference for a Preliminary Ruling.
51	164/2019-T	11/4/2019	VAT	VAT - Gymnasiums; Nutrition consultations; Exemption; No need for a preliminary ruling
52	163/2019-T	1/10/2020	VAT	VAT - Gymnasiums - Nutrition services - "Package" of services.
53	162/2019-T	12/23/2019	VAT	VAT - Provision of Nutrition Services - Exemption - Article 9, paragraph 1 of the VAT Code;
54	161/2019-T	10/31/2019	VAT	VAT - Provision of Nutrition Services - Exemption - Article 9, 1) of the CIVA.
55	159/2019-T	11/5/2019	VAT	VAT - Gymnasiums; Nutrition consultations; Exemption; No need for a preliminary ruling
56	570/2018-T	9/30/2019	VAT	VAT - Provision of Nutrition Services - Exemption - Article 9, 1) of the CIVA.
57	504/2018-T	7/22/2019	VAT	VAT - Gymnasiums; nutrition services; Reference for a preliminary ruling (annexed to the Decision - Decision for a preliminary order (annexed to the Decision).
58	454/2017-T	4/2/2018	VAT	VAT - Gymnasiums - Nutrition services - "Packages" of services.

The table analysis allows us to identify the value-added tax as the tax matter that promotes litigation between companies and the tax authority. This problem has generated fiscal conflict between the period 2017 to 2021, with the particular incidence in the years 2019 and 2020.

The exemption provided for in article 9(1) of the VAT law and its application is the main reason that leads gyms to request clarification from the arbitral body. In particular, the companies have doubts about the application of the in cases such as (1) the lack of registration with the health regulator, (2) the lack of proof of nutrition services, (3) the applicability and inapplicability of the exemption, (4) the VAT taxable base, (5) nutrition services in the context of "packages of services," (6) the fiscally accepted costs in the context of the provision of these services, (7) the related insurance, (8) the therapeutic purpose of nutrition services.

Among the cases identified are cases extending the request for clarification not only to nutrition services but also to physiotherapy services and their relevance in the health of gym users. Additionally, in 18 of the 58 awards, an appeal for review of the arbitral award was requested at the international level, meaning that interveners are not satisfied with the meaning of the decision.

One case, Case 264/2019-T of 29 May 2020, appealed the decision of the arbitral tribunal to the Supreme Administrative Court (STA), and the STA confirmed the meaning of the previous decision allowing for uniformity of jurisprudence.

The analysis of the case law allows understanding that when a nutritionist provides these services through an entity offering sports activities such as gyms, some doubts arise because the nutritional accompaniment may be considered as not having any therapeutic purpose. Clients could only benefit from the VAT exemption if certain conditions were observed. The arbitral tribunal has held that it is necessary to maintain specific requirements for this exemption to apply to gymnastics services. In several cases, the fulfilment of the conditions is complex and generates disputes between the Portuguese Tax Authority and the gyms.

5. Conclusions

The main objective of this article is to understand the legal framework of nutrition consultations provided by gyms and to know whether this issue leads companies to make legal claims to the arbitral tribunal. The results show that nutrition consultations benefit from an exemption in article 9 of the VAT law when provided in medical offices.

However, this understanding has yet to be directly recognized in the case of nutrition consultations provided within sports academies. More consultations are needed in gyms; specific requirements must be met for the service to benefit from an exemption. Additionally, the legal framework of these services has generated several application doubts, which led sports companies to claim in court for a clarification of the application of the law to the sector.

Despite the contribution to the literature, this research only studies the Portuguese case, which is a limitation. It would be interesting to replicate the study in other jurisdictions that have available the resolution of tax disputes through arbitration.

This academic paper highlights the significance of court rulings in providing much-needed clarity on various day-to-day challenges faced by managers. Moreover, it sheds light on the crucial role that laws and court rulings play as a vital source of valuable data in management research, enabling managers to make informed decisions based on legal precedents and best practices.

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