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By PwC Deutschland | 27. Oktober 2011

Sale of bad debts without recourse not a provision of services

The ECJ has held that the sale of currently due, but doubtful, debts at their agreed market value and without further recourse to, or obligations towards, the seller is a VAT-free sale of debts, rather than a taxable debt collection service.

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A bank sold a collection of mortgage debts that had fallen in due to debtor default on the instalments. The debts were, in accounting terms, at least doubtful, but the purchaser felt himself in a better position than the bank to ruthlessly pursue recovery, perhaps because he did not feel under the same social and local political pressures. Be that as it may, the debts were valued individually, on the basis of the estimated chance and period of recovery, but were sold as a package without guarantees and without recourse to the seller. The tax office saw the transaction as a disguised debt collection service, subject to standard rate VAT; the taxpayer maintained he had simply purchased debts to be realised for his own account. This was free of VAT.

The ECJ has now held that a sale of debts at an agreed valuation and without recourse back to the seller is not a disguised debt collection service. Over and under recoveries compared with the written down sales value (on average some 60% of the nominal) were for the sole account of the purchaser. He had purchased assets with the intention of realisation. He was under no further duties towards the seller, but the latter was also free of all further obligations towards him and towards the mortgage debtors.

The ECJ case reference is C93/10 *GFKL*, judgment of October 27, 2011.

Schlagwörter

bad debt, debt collection, without recourse