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Sale of shares as sale of business

The finance ministry has issued a decree to the effect that the sale of shares in a company can be non-VAT-able as the sale of a business, if the subsidiary meets the economic integration qualification for joining a VAT group with the acquirer.

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The sale of a self-contained business unit from one business to another is not turnover within the meaning of the VAT Act. In January 2011, the Supreme Tax Court held that this could also apply to the sale of the shares in a VAT group subsidiary. The condition was that either the entire share capital was sold, or that a majority holding was sold and the acquirer purchased with the intention of bringing the new subsidiary into a VAT group. The consequence of a non-VAT-able sale outside the scope f the VAT Act as opposed to a VAT-free sale of shares under the act was the deduction of the input tax on the (in this case, legal and consultancy) costs associated with the sale.

The finance ministry has now amended its VAT implementation decree to reflect this judgment. The sale of shares now ranks as the non-VAT-able sale of a business where the acquirer is able to assume the position of the seller as lead company in a VAT group comprising the subsidiary acquired. This condition is deemed to be met if the newly acquired business is integrated into that of its new parent, that is, the subsidiary supports or complements the operation of the parent. It is not essential that the new subsidiary actually join the VAT group, provided it does not do so for other reasons. Transactions currently in process are protected by the provision that no exception will be taken to continued adherence to the old view of the law (a sale of shares is privileged for VAT if it is also privileged for income tax) up to the end of March 2012.

Schlagwörter

Sale of shares, VAT group, sale of business