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By PwC Deutschland | 18. September 2013

No VAT on sale of bad debts

The Supreme Tax Court has held that a difference between the agreed price for a bad debt package and its agreed market value is, in cases of doubt, an ancillary service to the main supply.

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A bank sold its portfolio of non-performing loans to an English debt collection agency for a fraction of their nominal value. All of the loans were, in principle, currently due, any extended payment terms having been cancelled by the bank in view of debtor default on the instalments. The sale was agreed by contract dated February 18 and referred to the debts as they stood at the previous December 31. All movements and costs recorded or incurred by the bank in the interim were for the account of the buyer. The contract stated that the parties considered the sale to be a VAT-free sale of debt; however it also set an agreed valuation (of the realistically collectible amount) somewhat higher than the contract price, explicitly in case the tax office took a different view of the VAT position. Otherwise, the sale was absolute, with neither party having any right of recourse on the other.

The tax office took the view that the difference between the agreed valuation and the contract price was a taxable fee to the buyer for assuming the bad debt risk of the bank. As that, or a factoring fee, it was subject to standard rate VAT. However, the Supreme Tax Court has now rejected that view.

The Supreme Tax Court made the point that the agreed contract price between unrelated parties was manifestly the market value of the transaction. Accordingly, there was no scope for deeming a fee for an additional service. However, even if there were, that service could not and would not have been performed without the main transaction. It was therefore ancillary to that transaction and shared the same VAT status. That, though, was a VAT exempt sale of debt. The court added that the agreed evaluation of the collectability likelihood should be ignored. Its only purpose was to reflect a finance ministry decree with which the parties – correctly – disagreed. The market value was the price paid. Any difference between that and the amounts ultimately collected was a – later – gain or loss for the buyer.

Supreme Tax Court judgment V R 8/10 of July 4, 2013 published on September 18

Schlagwörter

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