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Factor remains liable for VAT even after surrender of the collection proceeds

The Supreme Tax Court has held that a factor’s liability for the VAT in a factored debt does not cease with the surrender of the proceeds of the debt collection to the original creditor.

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A factor accepted the trade debts of a company against an immediate payment of 80% of the nominal amount followed by the remainder when collected from the customers. This 20% was paid over less the agreed factoring interest and other charges. The factor assumed the bad debt risk, although, in the event, was able to collect the factored debts in full. The supplier, though, failed to meet his VAT obligations and then petitioned for bankruptcy. Accordingly, the tax office turned to the factor for the lost VAT under a provision in the VAT Act making a factor jointly liable for the VAT shown on a ceded invoice once the amount has been collected from the customer.

The Supreme Tax Court confirmed the factor's joint and several liability for the lost VAT. He had accepted the obligation with the cessation (acquisition) of the debts, which, in the event, he had been able to collect in full from the customers. The court brushed aside his protest that he had forwarded the proceeds (less his own charges) to the supplier company which was thus in a position to meet its VAT obligations. Under the relevant provision of the VAT Act, his liability only ceased with the payment of the VAT to the tax office. He could therefore have protected the financial interests of all concerned – including his own – by paying the VAT collected direct to the tax office. He had not done so, and thus had not discharged his liability.

Supreme Tax Court judgment XI R 28/13 of December 13, 2015 published on March 9, 2016

Schlagwörter

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