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By PwC Deutschland | 25 October 2012

VAT-free sale of business even if lease of premises terminable at will

The finance ministry has amended its VAT Implementation decree to the effect that a transfer of business premises by way of lease with only a short notice period does not detract from the VAT exemption for transfers of entire businesses.

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A sale of a business as a whole is free of VAT. As a whole is generally taken to mean that all significant assets of the business pass with the transfer, so that it can continue its operation in a substantially unchanged form. However, the legal title does not have to be identical; for example the Supreme Tax Court has held in the past that if a transferor retains the ownership of the business premises, leasing them to the new proprietor on an eight-year lease, the sale of the other business assets is VAT-free as the sale of a business as a whole. More recently, the ECJ has held that the lease does not have to be for a fixed term or only cancellable under a long period of notice, provided continued business operation is assured. The finance ministry has now responded with an amendment to the VAT Implementation Decree to the effect that the lease may be for an indefinite period, cancellable with only a short period of notice.

The amending decree specifies that the change should apply to all cases still open. However, now objection will be taken to treatment of transactions up to December 31, 2012 as taxable where the lease is of no fixed term, provided both sides take the same position.

Keywords

lease of premises, sale of business, sale of entire business