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By PwC Deutschland | 26 June 2013

Liability for VAT in ceded debts cannot be avoided by contract

The Supreme Tax Court has held that there is no way for the beneficiary of pledged trade accounts receivable to contract out of statutory liability for the VAT included in the amounts collected.

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The VAT Act contains a specific provision making the beneficiary of a ceded debt liable to the tax authorities for unpaid VAT included in the amount collected. A bank challenged the application of this rule to a lump sum payment from the receiver of one its customers to free fixed and current assets from a pledge given in security for a loan. The pledge was global, assigning the ownership rights over the trade accounts receivable, inventories and moveable equipment of the company. However, the company had unfettered rights of use and disposal in the ordinary course of business over the assets at any given time. Later, fell on troubled times and went into receivership. The receiver negotiated a lump sum settlement with the bank for the release of the pledge. The sum was set against the amount of the loan. Agreed values were assigned to the equipment and inventories, leaving a remainder falling to the accounts receivable. The tax office regarded that remainder as a collection by the bank and claimed the unpaid VAT included in the amount at the 19% standard rate. The bank argued that it had not collected accounts receivable and that, in any case, it had been agreed between the parties, that the pledge was net of VAT.

The Supreme Tax Court has now upheld the tax office' claim. The statute was widely drawn and cash collected by the bank on its pledged receivables was a collection of the bank debt from an assignment of receivables. That the money due from the customers had actually been collected by the receiver who had then paid over a lower amount to the bank meant merely that the bank had received less than the full nominal value of the receivables now settled. Accordingly, its VAT liability was to be reduced to the VAT inherent in that lower amount. The court also rejected the bank's claim that the parties had agreed on a pledge net of VAT. The accounts receivable had been pledged as they stood. Each one was a separate debt, but the VAT was only one element of that debt. There was no valid way of splitting a debt into its component parts and thus no way of separating the base amount from the VAT charged thereon. Any agreement to the contrary should be ignored. The VAT had not been paid by the company; the bank had received an amount on the debts pledged and that amount had to be regarded as inclusive of 19% VAT now due to the tax office.

Supreme Tax Court reference XI R 11/12 judgment of March 20, 2013 published on June 26

Keywords

ceded debt, liability for VAT, pledge