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By PwC Deutschland | 24 October 2013

Option for VAT on sale of real estate

The finance ministry has accepted an option for VAT on the sale of a business property expressly agreed only for the event that the view of the parties of the transaction as a (VAT-free) sale of an entire business should prove to be unfounded.

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The sale of an entire business (to include the transfer of all significant assets needed for the business to survive as an independent entity) is free of VAT. The sale of real estate is, in principle, also free of VAT, although the parties to a conveyance of commercial property may jointly opt for VAT – in the interests of saving the input tax deduction previously claimed by the seller. Because it is not always clear that a sale of assets ranks as a sale of an entire business, the practice has grown up for buyer and seller to agree to VAT the sale of the property, should it be seen by the authorities as a separate transaction. The finance ministry has now accepted this practise in an amendment to the VAT Implementation Decree, provided it is clear that the parties exercised the option in the notarised conveyance of the property purely in case their joint view of the transaction as the sale of an entire business should prove to be unfounded. The option ranks as having been exercised on the day the conveyance took effect.

Keywords

entire business, option for VAT, sale of real estate