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Tax exempt assumption of liabilities

here an entrepreneur undertakes to enter into a tenancy (landlord and tenant) for a consideration, the supply is tax exempt according to Section 4 No. 8 (g) VAT Act.

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The procurement and assumption of liabilities, sureties and guarantees as well as the administration of securities by the creditor are VAT exempt according to applicable EU law. This exemption has its derivation in financial services (cf. the ECJ decision Velvet & Steel Immobilien from 19 April 2007 – C-455/05).

In the case at hand the appellant, a real estate management company, assumed tenancy obligations towards the purchaser of real estate. The purchaser had stipulated that he was only prepared to purchase the real estate if an additional specific percentage of the empty space was let for a period of 5 years. Accordingly, the seller and the appellant came to an agreement under which the appellant undertook to enter into a tenancy agreement “directly with the purchaser of the real estate”.

Subsequently, during the course of a tax audit, the tax authorities reached the conclusion that, as a result of the agreement, the appellant had made a taxable supply which was subject to VAT and increased the taxable turnover accordingly. Both administrative appeal and the appeal to the lower tax court were unsuccessful. The Supreme Tax Court, however, took another view. The Supreme Tax Court raised doubts, as to whether the supply was even taxable. In any event, if the supply were taxable, it would be tax exempt under Section 4 No. 8 (g) VAT Act. According to Supreme Tax Court case law, this provision applies to the assumption of a bidding guarantee for a consideration. On a similar basis, the taxable waiver of a rental guarantee is also tax exempt, if the grant of a rental guarantee is tax exempt or would be tax exempt if a compensation were paid.

Reference: Supreme Tax Court decision of 30 November 2016 (V R 18/16) published on 11 January 2017

Keywords

Assumption of liabilities, Rental guarantee, VAT