Downloaded from Blogs on 03.11.2026 02:38

By PwC Deutschland | 25 April 2017

# VAT exempt assumption of a liability

**The Supreme Tax Court held that the commitment to enter a rental agreement is a VAT exempt service.**

Downloaded from Blogs on 03.11.2026 02:38

A real estate management company (plaintiff) assumed the lease obligations against the buyer of a property. The buyer wanted to acquire the object from the seller only on the condition that a certain share of the vacant space was rented additionally for a period of five years. The seller and the plaintiff therefore agreed that the latter should take over tenant obligations directly against the buyer of the property. This brought the tax administration to conclude that a VATable service took place. Initially, the lower tax court dismissed the complaint of the plaintiff. The Supreme Tax Court, though, reversed this decision and agreed with the real estate management company.

According to German VAT law “the assumption of obligations, guarantees and other securities and the negotiation of those transactions” is exempt from VAT. Initially, the German Supreme Tax Court had some doubts whether the transaction is within the scope of German VAT law at all. Notwithstanding, it concluded that the plaintiff had accepted a monetary liability which in any case falls under the VAT exemption. The plaintiff had received a payment from the seller in an amount of all net rental fees as agreed, while the rental fee was payable monthly for the five years to come. Therefore, the plaintiff had, in economic terms, merely obtained an interest advantage. According to the Supreme Tax Court it did not matter whether the plaintiff would himself conclude the rental agreement or whether he would enter into an existing rental agreement.

Supreme Tax Court judgment V R 18/16 of November 30, 2016 published on January 11, 2017

**Keywords**

Assumption of liabilities, Rental guarantee