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Sale of a self-contained business as VAT exempt service

In two most recently published decisions the Supreme Tax Court commented on the VAT situation in the event of the sale of a business which is not turnover within the meaning of the VAT Act under certain circumstances. The court denied VAT exemption in both cases, namely where - after the sale - the business is continued by the lessee and where facilities in a solar park are transferred to various purchasers while continuing to feed electricity into the grid.

Pursuant to Section 1(1a) VAT Act, the sale of a self-contained business or the sale of an entire business is not turnover subject to VAT provided the sale includes all assets necessary for the purchaser to continue the operation.

Brief summary of the cases as decided by the Supreme Tax Court

One case involved a GmbH & Co. KG (a limited partnership with no natural person bearing unlimited liability) that operated a fish processing plant, a fish farm, a farm stand, and a restaurant. In the case of a chain of transfers, the intention to continue the business operation must be with the ultimate acquirer and not with the intermediate owner. The Supreme Tax Court went on to say, that the requirement for continuation is not met if - as in the case in dispute - the purchaser does not use the transferred assets for his own business activities but rather leases the assets and the entire fish farm, including the buildings and fish-rearing tanks as well as the rights arising from the water permit to a limited liability company (GmbH).

The intention to continue the business by a third party who is not the beneficiary of the sale is not sufficient. The non-taxability does therefore not extend to transactions with third parties.

In the second case, the Supreme Tax Court held that a VAT free sale of a business as a whole can not be assumed if the business owner sells several (in this case: ten) parts of a solar park operated by him to individual purchasers and continues his economic activity after the transfer of these sub-plants by feeding the electricity generated there into the grid as before in his capacity as a “plant operator” while still receiving the remuneration provided for under the Renewable Energy Sources Act.

The plaintiff continued to carry out its economic activity which, given the circumstances of the case, was essentially by way of power feed into the grid. Under the Renewable Energy Sources Act, only the plant operator is entitled to the ensuing remuneration. The plaintiff’s economic activity was thus essentially characterized by the existing grid connection which was non-transferable in this specific form and from which the plaintiff was able to feed into the grid the solar power generated by the entire solar park and receive remuneration as agreed at the time of the conclusion of the underlying contract.

Source:

Supreme Tax Court, judgments of 13 November 2025 (V R 3/23 and V R 32/24) published on 19 March 2026.

Keywords

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