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German Tax and Legal News

BFH rules on VAT treatment of a transfer of a going concern to a group of purchasers

No transfer of a going concern occurs where a business is transferred as a whole to a group of purchasers if each separate transaction involved in the transfer does not fulfill the criteria for of a transfer of a going concern.

Germany's Federal Tax Court (BFH) issued a decision February 4, 2015 on the criteria that must be fulfilled for a transfer of a going concern for VAT purposes in order to consider the transaction as out of scope of VAT.

The BFH overturned a lower court decision and ruled that a transfer of essential parts of a business owned by a group of owners to a group of purchasers could not be considered as a transfer of a going concern where no separate business unit was transferred and the parts of the business were transferred to different purchasers within the group, even though the group intended to jointly continue the business. In the case decided by the BFH, a company transferred its business to a group of purchasers in such a way that different purchaser acquired the land, the inventory and the shares in the companies leasing the premises. The BFH held that a single part of the business, such as the inventory, is not a separate business unit itself, so the transfer of inventory alone was insufficient to qualify as a transfer of a going concern. The fact that immovable property and shares also were sold to the group of purchasers that intended to continue the business did not result in a transfer of a going concern because those assets were sold to different parties.

The BFH overruled a previous decision issued by the Finance Court of Rheinland-Pfalz, which had held that the fact that the group of purchasers intended to continue the business was sufficient to qualify the transactions as a transfer of a going concern. (For coverage of the lower court decision see [Deloitte Tax-News dated March 24, 2015](#)).

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