

KMLZ VAT NEWSLETTER

Adjustment of VAT clauses in contracts for the purchase of immovable property

1. Legal background

In the fiscal authorities' view, waiving tax exemption regarding contracts for the purchase of immovable property can only be declared effective up to the expiry of the period for lodging an appeal.

2. Problem: Transfer of business

The fiscal authorities' view regularly leads to problems in cases where the parties to the contract for the purchase of immovable property assume a transfer of business that is not subject to VAT, as it often is not clear whether the conditions for the transfer of a business as a going concern are actually met.

There are often serious consequences for the seller if the parties wrongly assume the transfer of a business, as the fiscal authorities will treat the sale as a taxable but VAT

Federal Ministry of Finance's circular on preventive options

In its circular of 23 October 2013, the Federal Ministry of Finance made statements regarding the effectiveness of VAT clauses in contracts for the purchase of immovable property. According to this circular, only unconditional clauses retroact to the time the contract was concluded.

exempt supply. Therefore, the transferor regularly needs to adjust his input VAT deduction. Often, an option for taxation is no longer possible. In order to prevent this and "to be on the safe side", the parties have, in such cases to date, declared the option for VAT.

3. Federal Ministry of Finance's circular of 23 October 2013

In its circular of 23 October 2013, the Federal Ministry of Finance decreed that such options, that were originally declared as a precautionary measure, are to be made unconditionally. Conditional options are invalid.

4. Recommendations

Due to the Federal Ministry of Finance's circular, the previously used VAT clauses are to be adapted. In the future, only unconditional VAT clauses should be used in contracts for the purchase of immovable property. If required, we will happily send you a sample wording via e-mail.