

## Transfer of Intangible Assets Qualifies as Service for VAT Purposes

by Sabine Demel

Reprinted from *Tax Notes Int'l*, June 27, 2011, p. 1018

# COUNTRY DIGEST

## Transfer of Intangible Assets Qualifies As Service for VAT Purposes

On June 8 the German Ministry of Finance issued a circular clarifying that transfers of intangible assets, such as goodwill or customer lists, should be treated as a service for German VAT purposes.

The guidance is a reaction to the October 22, 2009, decision of the European Court of Justice in *Swiss Re Germany Holding* (C-242/08). The German Federal Tax Court had referred the case in its decision of April 16, 2008, to the ECJ, asking specifically whether the transfer of life insurance contracts constituted a transfer of goods or a service for VAT purposes. (For the ECJ decision, see *Doc 2009-23447* or *2009 WTD 204-23*; for related coverage, see *Doc 2009-23440* or *2009 WTD 204-2*.)

The ECJ held that the transfer of life insurance or reinsurance contracts qualifies as service and not as supply of goods because the contracts do not constitute tangible assets under article 5, paragraph 1 of the Sixth

VAT Directive (77/388/EEC of May 17, 1977). Thus, the transfer of these contracts must be qualified as cession of an intangible asset under article 6, paragraph 1 of the directive.

In its guidance, the MOF follows the judgment of the ECJ and extends the treatment to other intangible assets such as goodwill or customer lists. The guidance will be applicable for all open cases. However, for simplification purposes, it will be acceptable for an entrepreneur to treat any transfers of intangible assets occurring before July 1, 2011, as a supply of goods.

The treatment of the transfer of intangible assets as a service will affect the possibility of VAT exemption. Under section 4, No. 28 of the VAT Act, the supply of goods that were previously used solely for certain VAT-exempt purposes is itself VAT exempt. However, this exemption will not apply when the transfer of intangible assets qualifies as a service. ♦

♦ *Sabine Demel, P+P Pöllath + Partners, Frankfurt*