By PwC Deutschland | 09. Februar 2011

No insurance tax on risk retention by lessor

The Supreme Tax Court has held that the retention by the lessor of the risk of loss damage to motor vehicles in the hands of the lessee in return for an additional fee is not a taxable insurance.

A motor vehicle lessor required as a matter of course that lessees bore all risks of accidental or other loss or damage to the cars. Lessees were required to take out the necessary insurance cover to ensure they could meet their commitments. Later, the lessor offered to bear the risks himself - other than those from the gross negligence or wilful misconduct of the lessee - in return for an additional fee. The agreement for this transfer of risk was modelled on an insurance policy. The tax office saw it as such and demanded insurance tax on the fee as an "insurance premium".

The Supreme Tax Court has now held that the arrangement was not an insurance policy. Rather, the lessor had agreed to bear his own risks of ownership, that is, he had agreed to waive his rights to transfer them to the lessee. The fee was therefore not an insurance premium and could not be subject to insurance tax. This applied not only to new leases agreed on inception to be without risk for the lessee, but also to amendments to existing leases. The court then added that any damages paid out by the lessor were paid to repair or replace his own property. The arrangement was thus similar to a "self-insurance" which has already been held to be a "non-insurance" and therefore without insurance tax relevance.

Supreme Tax Court judgment II R 21/09 of December 12, 2010 published on February 9, 2011

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