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By PwC Deutschland | 04. Februar 2015

Used car warranty by third party an insurance?

An ECJ advocate general has suggested the court hold the provision of a warranty by an independent business for certain components and assemblies within used cars sold by a dealer is an insurance, the premium for which should be taxed as such.

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An Italian company offered a warranty service to a series of user car dealers in France. The dealer offered car buyers a warranty for certain parts and assemblies for a certain period. This warranty was over and about that which dealer was legally required to give and therefore had to be paid for separately, either as a direct charge from the service company, or through a higher purchase price paid to the dealer. The service company saw its service as ancillary and incidental to the main sale by the dealer and thus as chargeable to standard rate VAT. The French tax authorities saw it as insurance free of VAT but chargeable to insurance tax.

The advocate general on the case at the ECJ points out in his opinion just published that the concept of insurance is not defined precisely in community law. However, accepting that the service provider in the present case has no interest in, and is not a party to, the main transaction, and that he effectively spreads the risk over the community of insured persons through premium adjustments in the following year, the advocate general saw the arrangements at issue as generally fulfilling the main criteria for insurance. This included the statistical methods used to calculate the warranty fees on the basis of anticipated claims. Claims are made directly to the warranty provider, who settles them without reference to the dealer who sold the car. Counter-arguments to the effect that the warranty was the equivalent of an enhanced dealer warranty taxable as part of the sale of the car should be rejected as the warranty provider was not the same person as the dealer and did not offer the same service. Rather, he undertook to meet approved repair bills, whereas the dealer guaranteed the running of the car. The dealer could discharge his warranty obligations in various ways – repair, replacement or settlement of repair bills from other garages – and was also able to minimise his risk with appropriate testing of the car before it was sold. He was not therefore offering insurance.

The ECJ case reference is C-584/13 *Mapfre* opinion of February 4, 2014.

Schlagwörter

Insurance tax, dealer, warranty