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By PwC Deutschland | 02 March 2011

Variable insurance policy excess not taxable as premium

The Supreme Tax Court has held that only payments by an insured person in return for risk assumption by the insurer qualify as insurance premiums subject to insurance tax.

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A group of local authorities pooled their public liability risks on an association formed for that purpose. The association took up a reinsurance policy and charged the premiums to the group members. It also charged back its own admin costs and allocated the cost of damages not covered by the reinsurance. All charges to members were based on the proportion of insurable risks stemming from each. The association closed the year with a settlement of the difference between the costs charged and the damages already paid by the members direct to claimants. This difference could be positive or negative in any given case. The association declared insurance tax on the basis of the total net payments received from members, whilst the tax office insisted the tax be charged on the gross cost and damage allocations charged out.

The Supreme Tax Court has sided with the association. The method of settlement was not merely an offset of debits and credits, fundamental to the establishment of a claim. If it led to a net amount payable by a member, the payment was equivalent to an insurance premium and was subject to insurance tax. If the settlement showed a net credit, the payment to the member was not a taxable event. In effect, each member bore its own risk up to a set level determined in retrospect, i.e. it accepted a variable policy excess. An insurance excess was "self-insurance", that is an uninsured risk. As an uninsured risk it was not a premium subject to insurance tax. Similarly, the third-party claims met by each group member were to be seen as claims for damages met by the member from its own resources. Here, too, there was no insurance.

Keywords

Insurance tax, insurance excess, premium