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No insurance tax for warranty risks on construction work abroad insured within EU/EEA

The Supreme Tax Court has held that insurance taken out with an EU/EEA insurer to cover warranty risks on a plant constructed outside Germany is free of insurance tax. However, the same insurance taken out with a non-EU/EEA insurer is subject to the tax if the insured person is a domestic legal or natural person.

A German building contractor constructed an industrial plant in Norway. One of the conditions imposed by the customer was a two year warranty on defective construction, assembly, design or manufacture. This warranty included bought in components and sub-assemblies. The contractor insured the risk with one German and two Swiss insurance companies. He treated the insurance premiums as costs of the Norwegian construction site permanent establishment and thus as being free of German insurance tax. The tax office disagreed; the contractor had covered risks arising after project completion to be borne by the main German undertaking. The insurance therefore covered a German risk and the premiums were subject to 19% insurance tax.

The Supreme Tax Court has now exempted the insurance taken out in Germany, but not the two policies taken out in Switzerland. In doing so it followed strictly the letter of the law. The Insurance Tax Act exempts policies taken out with EU/EEA insurers for risks arising “by reference to” immovable property outside Germany. The insurance tax obligation on policies taken out with non-EU/EEA insurers arises by contrast in all cases where the insured person is a German resident individual or German registered corporation. The insured risks arose by reference to the Norwegian construction site even if the actual defect had been caused in Germany (such as faulty components or design). Similarly, the purpose of the policies – to protect the German undertaking from future risks – was irrelevant, given the precise wording of the statute. Thus the premiums paid on the German policy were not chargeable to German insurance tax, whereas those paid on the two Swiss ones were.

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