

Guarantee Commitments as VAT-exempt insurance services

October 2021

In Brief

In its decrees dated May 11, 2021 and June 18, 2021 the German Federal Ministry of Finance (Bundesfinanzministerium, "BMF") took the German Federal Fiscal Court decision of November 14, 2018, according to which the guarantee commitment of a motor vehicle dealer in return for payment is VAT-exempt as an independent service, as an opportunity to comment on various VAT and Insurance Premium Tax (IPT) consequences of guarantee commitments. As a result, in practice most guarantee commitments issued after 31 December 2021 will be subject to IPT instead of VAT. These principles will not be limited to the motor vehicle sector or to motor vehicle dealers but will be applied in all areas irrespective of the industry.

Background

In its judgment of 14 November 2018, the Federal Fiscal Court decided that the guarantee promise of a motor vehicle dealer in return for a payment is not a dependent ancillary service to the delivery of the vehicle, but an independent service. A guarantee promise by which the motor vehicle dealer as guarantor promises a monetary payment in the event of a guarantee claim, is a service based on an insurance relationship within the meaning of the German IPT Act, which is exempt from VAT under Sec. 4 No. 10 letter a of the German VAT Act. With reference to case law of the Court of Justice of the European Union (CJEU), the supreme tax judges also stated that the service which the insurer is obliged to provide in the event of an insurance claim does not need to consist of the payment of a monetary amount, but instead may also consist of assistance, either in the form of a monetary payment or benefits in kind.

In its decrees, the BMF goes into more detail on the various IPT and VAT case constellations of the Federal Fiscal Court ruling. In addition, Sec. 3.10 para. 6 no. 3 of the VAT Application Decree has been amended accordingly.

Insurance premium tax

A seller's/dealer's contractual guarantee in return for payment that, in the event of damage to the purchased object, he will be responsible for the damage in such a way that the buyer has a claim against the seller/dealer for repair or reimbursement of repair costs, constitutes an insurance relationship between the seller/dealer and the customer within the meaning of the German IPT Act.

This does not apply, if the seller's/dealer's guarantee commitment only is given in connection with a full maintenance contract for the object of purchase. In this case, the service is not an insurance service subject to IPT, but rather a service of its own type that is generally subject to VAT.

Reinsurance: If the seller/dealer being a guarantor, as an insurer within the meaning of the German IPT Act, insures himself with another insurer against the occurrence of guarantee claims, this generally constitutes an IPT-exempt reinsurance relationship within the meaning of Sec. 4 no. 1 of the German IPT Act. If, however, the seller/dealer issues the guarantee promise in connection with a full maintenance contract for the object of purchase, there is no insurance relationship between the seller/dealer and the customer. As a result, there is no IPT-exempt reinsurance relationship between the dealer/guarantor and the insurer, but rather a (primary) insurance relationship which is subject to IPT.

Furthermore, the BMF discusses the customer's/warranty holder's right to choose between a claim for repair against the dealer/guarantor and a claim for reimbursement of the repair cost against another insurer. It also comments on the customer's/warranty holder's insurance protection through an insurance policy taken out by the seller or dealer for third-party account.

For the avoidance of doubt, it should be noted that the tax principles on guarantee commitments go beyond the application in the motor vehicle sector and for motor vehicle dealers but will be applied in all areas irrespective of the industry, cf. BMF decree of June 18, 2021.

VAT consequences

The VAT exemption of insurance benefits applies both to a monetary payment and to a payment in kind in the event of a claim. The input tax deduction of the seller or dealer in connection with the tax-exempt insurance services is excluded (Sec. 15 para. 2 no. 1 VAT Act) unless the conditions for a re-exception according to Sec. 15 para. 3 no. 1 letter b or no. 2 letter b VAT Act are met in the individual case.

Application period

As set out in the BMF decree dated June 18, 2021, these principles are applicable to guarantee commitments issued after 31 December 2021. For guarantee commitments issued before 1 January 2022, it will not be objected if the principles are already applied.

References

Decree of the German Federal Ministry of Finance dated May 11, 2021, III C 3 – S 7163/19/10001 :001, German Federal Tax Gazette 2021, Part I, Page 781.

Decree of the German Federal Ministry of Finance dated June 18, 2021, III C 3 – S 7163/19/10001 :001, German Federal Tax Gazette 2021, Part I, Page 871.

Decision of the German Federal Fiscal Court dated November 14, 2018, XI R 16/17, German Federal Tax Gazette 2021, Part II, Page 461

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