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By PwC Deutschland | 29 August 2025

Trade tax addback of interest on deposit liabilities in the retrocession business

In a recent judgment, the Supreme Tax Court decided, inter alia, that interest on deposit liabilities in the retrocession business of a reinsurance company is subject to the trade tax addback pursuant to Section 8 no. 1 letter a Trade Tax Act. There is no general exception for insurance and reinsurance companies similar to the so-called trade tax banking privilege.

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Background

The definition of retrocession encompasses the process where a reinsurer, seeking to minimize its exposure to potential losses, cedes a portion of the risks it has assumed from a primary insurer to another reinsurer (market participant).

The plaintiff operated as a reinsurer in the year of dispute. It transferred part of an agreed transaction or risk to another market participant. For this purpose, the plaintiff concluded reinsurance contracts and paid interest on deposit liabilities to the retrocessionaires (the holders of the reinsurances). The tax office treated the interest as remuneration for debts and added the amount of one quarter to the plaintiff's trading profit in accordance with § 8 No. 1 letter a Trade Tax Act (TTA). The plaintiff's action before the tax office was dismissed, and the tax court of first instance also rejected the appeal as unfounded.

Decision

The Supreme Tax Court decided that none of the circumstances presented by the plaintiff prevented a partial addback of the interest paid on deposit liabilities. In particular, the plaintiff could not invoke an exception to the trade tax addback of interest applicable to certain primary insurance companies: These special provisions apply to fees in connection with a special fund maintained by the party liable for payment. According to an erstwhile administrative opinion, interest on deposit liabilities is not added back (at a rate of one quarter) if it is attributable to provisions or deposit liabilities required for insurance or accounting purposes that are covered by collateral assets within the meaning of Section 66 et seq. of the Insurance Supervision Act (old version).

There is also no general exemption from the trade tax addback provision for insurance and reinsurance companies comparable to the so-called banking privilege (as they are not specifically listed in Section 35c (1) number 2 letter e of the Trade Tax Act and in Section 19 of the Trade Tax Implementation Ordinance).

Furthermore, and contrary to the plaintiff's opinion, there is no general (unwritten) legal principle that double taxation must be avoided when determining the basic assessment amount on which trade tax is levied. Nor could these debts be viewed as transitory loans because the plaintiff did not take out the deposit liabilities in the interests of third parties for a purpose outside of its business. By concluding retrocession agreements, the plaintiff primarily reduced and straightened out (smoothed) own risks and strengthened its equity capital.

In addition, the Supreme Tax Court points out that a reinsurance company cannot avoid the partial addback of interest paid on deposit liabilities by offsetting it against interest received on deposit receivables. That is because each debt must be viewed individually when determining whether the trade tax addback requirements are met. Payments for debts can therefore only be combined or offset in exceptional cases.

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Finally, the court held that this case is not comparable to cash pooling. Offsetting liabilities owed to one creditor against claims owed to another debtor is not accepted based on case law. The case law on valuation units or swaps is also not relevant as the reinsurance contracts and retrocession contracts were not congruent concerning the parties to the contract.

Source:

Supreme Tax Court decision of 21 May 2025 III R 32/22 - published on 28 August 2025.

Keywords

reinsurance, trade tax addback