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Tax treatment of after-sale warranties: VAT or insurance tax?

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It frequently happens, particularly in the automotive sector, that the sale of products, such as motor vehicles, is accompanied by the sale of after-sale maintenance packages.

The treatment for indirect tax purposes of such after-sale maintenance packages should be carefully analyzed according to the tax laws of the State of residence of the manufacturing company and the tax laws of the State in which the product is sold.

General tax treatment of after-sale warranties

After-sale warranties are generally characterized by the fact that the seller offers a warranty, which goes beyond statutory warranty rights and for which a separate fee will be charged. Often such warranties are offered together with the sale of goods (e.g. a car).

Germany

In Germany, according to the letter from the German Federal Ministry of Finance dated October 18, 2021, a warranty commitment against separate payment is not a dependent ancillary service to a delivery of goods, but an independent service based on an insurance relationship within the meaning of the German Insurance Premium Tax Law (VersSTG). As a result, such warranties are subject to Insurance Premium Tax (IPT) and exempt from German VAT from January 01, 2023. In the past such warranties were considered as depended ancillary service to the supply of goods and the VAT treatment of the sale of goods was applicable accordingly.

There are different warranty agreements, which e.g. include the right for repair, replacement/substitution or refund of the purchase price/current value and may also include compensation for consequential damage such as loss of income. For the assumption of a IPT taxable warranty agreement it is basically not relevant, if a replacement, repair, or a refund will be agreed.

Warranties generally constitute an IPT taxable insurance relationship, provided the assumption of risk and insurance benefits are the main obligations of the contract and a separate fee is agreed. For IPT liability it is basically irrelevant if the after-sale warranties are granted by the manufacturer or a dealer.

The IPT debtor is generally the person designated as the policyholder in the insurance contract, even if the customer is as a private person. However, the tax is generally payable by the insurer and needs to be declared by him for the account of the German policyholder. The insurer's domicile is irrelevant for the filing and payment obligation. The tax incurred upon payment or receipt or maturity of the insurance premium and must be calculated, declared, and paid to the Federal Central Tax Office within 15 days of the end of each declaration period.

The IPT rate of 19% (corresponds to the German VAT rate), the tax amount and the IPT number need to be shown on the invoice issued to the customer.

Warranties as mentioned above are VAT-exempt due to Section 4 No. 10 letter a German VAT Law (UStG). This applies both to a cash payment and to a benefit in kind in the event of a claim. The input tax deduction of the seller (insurer) from input services in connection with VAT-exempt output transactions is generally excluded (Section 15 (2) No. 1 UStG).

Italy

In Italy, the Revenue Agency, in the answer to the tax ruling request no. 17/2023, provided clarifications on whether the sale of a time extension of legal warranties could be qualified, for VAT purposes, as a service ancillary to the associated main sale of products, therefore subject to ordinary VAT. In line with EUCJ caselaw (and not far from the new regulation introduced in Germany, described above), the Italian Revenue Agency, for the first time, deemed that such extended legal warranties could not be qualified as ancillary services to the supply of goods, and consequently, both the transactions (i.e., the supply of goods and the sale of the extension of a legal warranty) should be considered as separate and subject to their own VAT regime (in the case at hand, the extension of a legal warranty would be considered exempt from Italian VAT as an insurance transaction). The Italian Revenue Agency does not go so far as to conclude that insurance tax applies, but the doubt is legitimate, given that these services are considered exempt from VAT because they qualify as insurance services, even though they are not carried out by insurance companies.

The interpretation provided for by the Italian Revenue Agency in tax ruling no. 17/2023 applies only to the specific case that was the object of the tax ruling request, but - lacking specific regulatory provisions - represents a precedent that requires a case-by case analysis of the tax treatment of after-sales warranties. The qualification of after-sale warranties as VAT exempt insurance services could indeed trigger limitation to the deductibility of input VAT for the seller and the possible application of Italian insurance tax.

France

From a French tax perspective, as for Italy and Germany, the additional warranty service for a sold item, on the one hand, and the service involving the sale of the item, on the other hand, should be considered as separate. In such case, each service is subject to its own VAT regime meaning that the extension warranty would be considered as an insurance transaction and therefore exempt from French VAT. The French supreme court has established criteria in order to determine when a warranty service should be considered as an insurance operation (and therefore exempt from French VAT) and not as a service ancillary to the sale : (i) the warranty involves the conclusion of an agreement with a third party to the sale, (ii) which, in exchange for an agreed sum, obliges the guarantor company to provide the buyer with the agreed service, (iii) and the guarantor bears the cost of the service without recourse to the seller (Cass. Com. N°12-15.419, 24/11/2015). The French tax authorities have clarified that the fact that the insurance service distributed by the seller is integrated into a taxed operation by the seller has no impact on the application of the VAT exemption that applies to the acquisition of the insurance service by the seller (BOI-TVA-CHAMP-60-40 n°10).

However, as a secondary consideration, the French tax authorities take the view that when the warranty is directly offered by the seller as part of the sale of the product (no separate agreement), it is treated as an after-sales service subject to VAT. Each transaction, the sale and the warranty, follows its own VAT regime, particularly with regard to VAT liability (BOI-TVA-DED-40-40 n°200 to 240).

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