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Indirect Tax Alert

Italian Supreme Court rules coinsurance fees are subject to VAT

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Executive summary

On 11 May 2018, the Italian Court of Cassation[1] (Court) issued a landmark judgment[2] concerning the Value Added Tax (VAT) treatment of coinsurance fees. The Court ruled for the reasons set below, that the services supplied by the delegated insurer to the other co-insurers are neither exempt financial services nor ancillary to insurance services and therefore subject to VAT.

Detailed discussion

An Italian insurance company entered into a coinsurance agreement, under which, acting as delegated insurer, it provides collection of insurance premiums and claim payments (Services) and, acting as delegator, it receives the same services from other coinsurers.

The fees paid and received for the delegated services were treated as VAT-exempt insurance service pursuant to article 10, Para 1.2 of the Italian VAT Law, implementing Article 135, Para 1.a, of the VAT Directive.

However, the Italian Tax Authorities (ITA) challenged the exemption and served a tax assessment notice to the company and a deed of infliction of penalties (Deeds) related to fiscal year 2005, re-characterizing the Services as subject to VAT.

The insurance company filed an appeal against the Deeds and both the First Degree Tax Court and the Second Degree Tax Court[3] ruled in its favor and confirmed the exemption, by arguing that the Services were to be considered ancillary to the insurance contract.

The ITA then appealed the decision before the Court of Cassation that, in contrast to the lower courts, ruled in favor of the ITA and stated that the Services are subject to VAT.

The Court analyzed whether the Services can be considered exempt because they qualify either as:

- An insurance service
- An insurance-related service
- A service falling under the commissionaire scheme under article 28 of the VAT Directive

With regard to the first question, the Court noted that, under the VAT principles, the essential feature of an insurance service is the commitment to cover a risk in exchange for a premium.

Based on this finding, the Court held that the Services could not be considered insurance services, because they do not alter, extend or modify the contractual obligations that each coinsurer undertakes with the policyholders.

Indeed, the coinsurance agreement is aimed at better managing the insurance contract and the related administrative tasks but it does not entail that the delegated insurer undertakes a larger portion of risk because of the delegation nor it impacts on the portion of risks that each coinsurer undertakes under the coinsurance agreement.

With regard to the second question, the Court ruled that the Services were not related to the insurance services provided by the coinsurers.

In this respect the Court opined that two conditions must be jointly met in order to qualify a service as insurance related:

- It must present a close and necessary connection to the activities of insurance or reinsurance
- It must be provided by an insurance broker or by an insurance agent or cover the essential aspects of these roles (i.e., finding prospective clients or introducing clients to the insurer)

Based on this, the Court ruled that the Services provided by the delegated insurer cannot qualify as insurance related, because they are not aimed at finding prospective clients nor at introducing them to the insurers, but only at responding to administrative needs of the insurer, once the insurance contract has been signed.

Finally, the Court also ruled that the exemption does not apply under the commissionaire scheme,[4] because the Services provided by the delegated insurer on behalf of the other co-insurers are neither an insurance service nor an insurance related service, according to the analysis performed under the prior two points.

Based on the above analysis, the Court held that the Services were subject to VAT.

The same position was maintained by the Court in other recent judgments.[5]

Endnotes

1. The third degree of judgment of the Italian tax litigation proceedings.
2. Cass. No. 11442 filed on 11 May 2018.
3. Regional Tax Court of Piedmont, judgment No. 1116/31/14 issued on 6 October 2014.
4. Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.
5. Cass. No. 11443 filed on 11 May 2018; Cass. No. 13111 and No. 13112 filed on 25 May 2018.

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