

Mapfre asistencia and Mapfre warranty (C-584/13) – CJEU Judgment released

Tax

The CJEU has released its Judgment in Mapfre asistencia and Mapfre warranty. [Access the Judgment here.](#)

The joined cases concerned an arrangement for the provision of breakdown warranties for second hand cars. However, the CJEU was only asked to consider the nature of the supply made by Mapfre warranty.

Though critical of the request for ruling submitted to it by the French referring court, the CJEU nonetheless sought to address the question before it which was whether Article 13(B)(a) of the Sixth Directive must be interpreted as meaning that

“the supply of services whereby an economic operator which is independent of a second-hand motor-vehicle dealer provides, in return for payment of a lump sum, a warranty covering mechanical breakdowns which may affect certain parts of that vehicle constitutes an exempt insurance transaction.”

The CJEU has decided, following the Opinion given by Advocate General (AG) Szpunar, that the supply by Mapfre warranty constitutes an exempt insurance transaction within the meaning of Article 13B(a) of the Sixth Directive (77/388).

Background

Mapfre warranty supplied a warranty covering the repair of specified mechanical breakdowns affecting second hand cars sold by dealers. The warranty was offered by car dealers to their customers when the customer purchased a second hand car either inclusive in the price of the car or as an add-on cost. If there was a fault with the car of a type covered by the warranty, the customer could obtain a quote to repair the car from a garage (this need not be the dealer where the customer purchased the car) and this quote was submitted to Mapfre warranty for agreement. A claim would only be met where the estimate was accepted by Mapfre.

The Judgment

The CJEU decided that the transaction before it had all the hallmarks of insurance as there was a clear transfer of risk. In coming to its view the CJEU analysed the key characteristics of insurance, which from a VAT perspective should be interpreted independently of the law of the Member State to avoid differences in the application of the insurance VAT exemption. Although the definition of insurance for VAT purposes is not clearly defined, the CJEU recognised that it had developed certain guidelines. These were summarised in BGZ Leasing, namely that

“...the insurer undertakes, in return for prior payment of a premium, to provide the insured party, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded.”

In reaching its decision the CJEU analysed carefully Mapfre’s arguments that it did not have a contractual relationship with the end customer (but solely with the dealer). The court however found that irrespective of this and other matters, the nature of the service was that of insurance.

The CJEU also considered whether the supply of the vehicle and the warranty were so closely linked as to be considered a single transaction. However, as the warranty is provided by a trader independent to the dealer, while stating it was ultimately a matter for the national courts to decide, the CJEU hinted strongly that the warranty in Mapfre should be considered a distinct and independent supply.

Why is this important

The CJEU decision means that certain supplies that might have hitherto been regarded as taxable warranties, where supplied by a person who may not be treated for regulatory purposes as an insurer, may nonetheless be VAT exempt supplies of insurance, if:

- a ‘warranty’ on goods is provided where the provider is not the retailer/manufacturer of the goods (even if the provider is in the same corporate group as the retailer/manufacturer); and
- the contract involves a transfer of risk, e.g. an obligation to replace or repair the item if it becomes faulty, at the provider’s cost (even though the contract may not be formally regulated as insurance).

Where insurance suppliers have been incorrectly treated as subject to VAT, suppliers may be able to make a claim for overpaid VAT. However, many EU Member States levy IPT, and if these supplies are subject to this tax, it may make these supplies uneconomical, although in some instances there may be ways to mitigate this increase in cost.

What now?

Taxpayers who offer warranties should review the potential impact of this decision including any additional IPT costs, and any opportunity to reclaim VAT accounted for in error, subject to unjust enrichment. Taxpayers should also wait and see how different Member States chose to implement the judgment, and the interaction between VAT and IPT in these Member States.

While the case concerned warranties, it may bring service type contracts under scrutiny as well.

As in France, the UK has different IPT rates: a standard rate of IPT of 6% (rising to 9.5% on 1 November 2015), and a higher rate of 20% which applies to the sale of certain motor and domestic appliance insurance, and travel insurance.

Contact us

If you have any questions about this case and its implications for your business, please contact one of the contacts below or your usual KPMG VAT adviser.

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