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European ruling on value-added tax spurs concerns about reinsurance

Court says Swiss Re owes \$3M in VAT for portfolio transfer

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LUXEMBOURG—A European Court of Justice ruling that Swiss Reinsurance Co. is responsible for €2 million (\$3 million) in value-added tax on a portfolio transfer has set off alarms in the marketplace that insurers and reinsurers may be liable for payment of the taxes on similar transactions.

The Luxembourg-based court, which is Europe's final court of appeal on tax matters, agreed on Oct. 22 with a lower court that Swiss Re owed the 19% tax it paid seven years ago on a portfolio transfer of 195 life reinsurance contracts from a German subsidiary to the Zurich, Switzerland-based parent.

The ECJ ruled in *Swiss Re Germany Holding GmbH vs. Finanzamt München für Körperschaften* that the transfer was not an exempt insurance transaction and therefore was subject to German VAT. Swiss Re argued that VAT, which is paid on goods and services in many European countries, should not apply.

“We are disappointed that the European Court of Justice confirmed the opinion of the German tax court but, in the absence of a right of appeal, we accept the decision,” a Swiss Re spokesman said in an e-mail. “The €2 million VAT payment was made in 2002, and this is now clearly irrecoverable. No new tax liabilities will arise for Swiss Re as a result of this judgment,” he said.

The decision likely won't have a big effect on the European reinsurance market, the spokesman said.

“We do not believe the ECJ's decision fundamentally threatens the basis of reinsurance business as a whole,” the Swiss Re spokesman said.

Some observers, though, say that ruling could have a wide impact if local tax authorities apply the ruling to portfolio transfers.

“What I am hearing from insurers is that they are going to talk to their local tax authorities,” said Richard Asquith, managing director of TMF VAT & IPT Services, a unit of U.K.-based accounting and tax advisory group TMF Group. “A lot of insurers and reinsurers are hoping that the local tax authorities will look the other way,” he said. “They can't, and shouldn't, but that's the hope.”

Tax authorities may decide to apply the ruling to business that is transferred from one jurisdiction to another by companies that move for tax reasons, Mr. Asquith said. “Every week it seems there's a new insurer moving to Switzerland or Dublin for tax reasons, which requires them to move contracts from one headquarters to another.”

The portfolio transfer by Swiss Re was simply moving the contracts from one subsidiary to another entity, Mr. Asquith said, and it is not unreasonable to expect that tax authorities, using the recent decision as guidance, may attempt to levy VAT on business transferred by companies changing jurisdictions.

“You can imagine if an insurance portfolio is worth many hundreds of millions of dollars,” Mr. Asquith said, that the application of VAT, which generally ranges from 15% to 25% in European countries, could generate “mind-boggling” tax bills.

Insurance and reinsurance market participants are poring over the decision to determine how it might apply.

“People are talking about it,” said Christopher Klein, managing director, global business intelligence, with Guy Carpenter & Co. Ltd. in London. “Few of us know much about the case,” he said in an interview at the annual gathering of reinsurers in Baden-Baden last week. “It seems to be very specific. Like everyone else, we’ll be watching it very closely to see what the implications are, if any.”

Victor Peignet, chief executive officer of property/casualty business at SCOR S.E. in Paris, said during a symposium at the Baden-Baden meeting that SCOR has not run into similar problems with the large portfolio transfers related to its acquisition of Converium Holding Ltd. SCOR also acquired life reinsurer Revios Rückversicherung A.G., but because the business between those two companies is largely complementary, life portfolio transfers have not been necessary, he said.

SCOR does transact “a lot of portfolio transfers” on nonlife business, Mr. Peignet said. “We are validating those portfolio transfers with the tax authorities of the various countries concerned...For the moment, we have not seen problems, but we are looking at this,” he said of the ECJ ruling, “and we are interested to know more about it.”

While he has had little time to consider the ruling, Clemens von Weichs, CEO of Allianz Re, said his first impression is that the decision is “a little bit amazing. Normally in insurance, we don’t have value-added tax, but we do have an insurance tax. I have not studied the court decision in detail,” he said, but at first blush it seems to present “a certain contradiction” with regard to taxes that could be owed by insurers and reinsurers.

The Swiss Re spokesman acknowledged that the decision’s consequences “will need to be considered in all European countries,” but noted that reinsurers and insurers “should not, in our view, panic. Many portfolio transfers may qualify for country-specific VAT exemptions under transfer-of-going-concern rules” or may not be the target of VAT payments under other local rules, he suggested.

Mr. Asquith said that insurers and reinsurers may face problems if VAT is assessed against the transactions because they cannot offset the tax in the same way as other companies.

“Most financial services companies are VAT-exempt,” Mr. Asquith explained. “That means they don’t have a VAT number. That’s important.” Holding a VAT number allows companies that are charged a VAT to offset those charges with the amount of VAT they charge others.

In other words, if insurers and reinsurers held VAT numbers, they could offset any VAT charges they incurred with amounts they paid to vendors and service providers.