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Changes to the German Insurance Premium Tax Through the Indirect Tax Amending Act

On 3 May 2012, the German federal government submitted a legislative draft of an act for the amendment of the German Insurance Premium Tax Act and the German Motor Vehicle Tax Act (Verkehrssteuergesetz – VerkehrStÄndG). This draft act is the legislator's reaction to losses in tax revenue from specific product structures (so-called insurance packages) as well as certain judgments by the Federal Tax Court, which were not decided in favor of the German tax authorities (Decision on the expiration of the accessory statute of limitations of the indemnitor and the Decision on deductibles under motor vehicle liability insurance). In addition, the draft act introduces administrative relief for insurance companies, such as the possibility of an annual insurance premium tax filing. The amendments should enter into effect on 1 January 2013

This Newsletter seeks to provide an overview of some of the important amendments to the Insurance Premium Tax Act:

- Extending scope of application of the Insurance Premium Tax Act to certain insurance policies with non-EU insurance companies

Pursuant to §1(4) of the Insurance Premium Tax Act, insurance policies with insurance companies not domiciled in the EU or EEA are subject to tax in Germany only if the policyholder has its domicile, habitual residence or registered office in Germany or the insured object is located within the jurisdictional scope of the Insurance Premium Tax Act. According to the legislative draft, an insurance policy between parties not domiciled in the EU or EEA is now subject to tax in Germany if the insurance policy refers directly or indirectly to a company, a permanent establishment or other facility located within the scope of the Insurance Premium Tax Act. The legislator is focusing on particular instances of group-wide insurance, in which plants/facilities or employees of German businesses/permanent establishments that pose a direct or indirect risk are insured through premises and operations liability insurance or professional liability insurance.

- Expansion of circle of liable parties; statute of limitations

Until now, Sec. 7 of the Insurance Premium Tax Act regulated that the policyholder was the liable taxpayer, while the insurance company was only required to forward the tax to the tax authorities and was liable for such payment. Following the amendment of the Act, the policyholder, as the liable taxpayer, and the insurance company, as the party responsible for reporting and forwarding the tax, are now treated the same. The insurance company will no longer be only an indemnitor following the amendment.

The circle of liable parties is to be expanded. The liable parties should now include (i) the party receiving the insurance premium, (ii) the party collecting the premium in the event of co-insurance, (iii) an insured party who enjoys insurance coverage in return for payment through insurance for the account of another (the policyholder and the insured party are not one and the same) and (iv) the insurance company, if it is not the party responsible for reporting and forwarding the tax because, for example, the insurance company does not have a registered office or a permanent establishment in the EU or in the EEA and an agent with a registered office in the EU or the EEA has been appointed to collect the insurance premium. In such a case, the agent would be the party responsible for reporting and forwarding the tax.

In addition, only the circumstances of the party, against whom a claim has been raised, are decisive for the statute of limitations. In other words, when determining the statute of limitations applicable to the party responsible for reporting and forwarding the tax, it is irrelevant whether the statutes of limitations for the taxpayer or for the indemnitor have already expired (e.g. as a result of a completed tax audit). This amendment is the legislator's response to the Federal Tax Court's decision on 13 December 2011 (II R 52/09) pursuant to which recourse could only be taken against the indemnitor if the statute of limitations for the taxpayer had not yet expired.



- **New rule for so-called insurance packages**

Rules for the treatment of insurance packages, i.e. bundled insurance coverage for various risks, in which a portion of the insurance package includes a policy that would not be subject to tax pursuant to Sec. 4 of the Insurance Premium Tax Act when viewed on an isolated basis, have yet to be issued. The Indirect Tax Amending Act is meant to standardized rules that have now been clarified. Thus, tax-exempt insurance policies that form part of an insurance package will be treated as tax-exempt only if said policy can be treated as a legally independent contract. This is the case if (i) the relevant insurance services and consideration (compensation) are set forth in the insurance contract, (ii) the services can be provided and performed independent of other services, (iii) the services are subject to independent terms and conditions under the insurance contract and (iv) the written insurance contract clearly and unambiguously demonstrates to the policyholder that several independent insurance policies were entered into.

At the same time, the draft legislation also addresses the treatment of insurance policies with separate tax rates and tax bases within an insurance package. The usual practice up to now has been to separately identify that portion of the premium paid for the relevant insurance services under the insurance contract and to apply the applicable tax rate together with the tax basis. According to the draft legislation, bundled insurance contracts will now generally be subject to the highest tax rate and the full tax basis, provided that no legally independent insurance contracts are available (see above).

This new rule would also apply to already existing insurance contracts.

- **Tax treatment of deductibles under motor vehicle liability insurance**

In reaction to the Federal Tax Court's decision on 19 December 2009 (II R 44/07), fictional premiums are to be subject to insurance tax in connection with deductibles agreed under motor vehicle liability insurance coverage, even though there were no payments or transfer of risk under the insurance contract. As a result, the premium is treated as the insurance amount that would have to be paid if the deductible had not been agreed upon. In practice, such deductibles are only relevant within the context of motor vehicle liability insurance for large fleets of vehicles (e.g. car rental companies).

With this amendment, the legislator follows the tax authorities' view that focuses mainly on the third party relationship between the insurance company and the injured party when calculating the insurance amount. As the insurance company is fully liable to the injured party, the policyholder's deductible, i.e. the release of the insurance company from its payment obligation, is to be treated as the insurance amount for obtaining insurance coverage. The Federal Tax Court's decisions (see above), however, have focused on the relationship between the insurance company and the policyholder and did not assume the assumption of insurance risk in the amount of the deductible in this relationship. The amendment would allow the tax authorities' view to prevail.

- **Identification of insurance premium tax in insurance premium tax invoices**

The draft legislation also requires that the insurance company clearly identify the tax amount, the tax rate and the insurance premium tax identification number issued by the Federal Central Tax Office in the insurance premium tax invoices in the future. In the case of tax-exempt insurance premiums, the relevant statutory provision for such tax exemption needs to be provided.

As a result, the formal requirements for insurance premium tax invoices are approximating the requirements under VAT law.

- **Changes to the insurance premium tax filing**

The legislative amendment should also introduce the electronic filing of insurance premium tax. Another change is the possibility of an annual filing, provided that the tax in the previous calendar year did not exceed EUR 1,000. In addition, the threshold for the possibility of a quarterly filing of insurance premium tax is increased to EUR 6,000 from the current EUR 3,000. In the future, fewer insurance companies should therefore be required to undertake a monthly filing.



be in touch: If you have any questions, please do not hesitate to contact us



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