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## Audits focusing on insurance premium tax relating to intragroup contributions

A provision that may result in insurance premium payments made by a nonresident to an insurer in a third country being subject to tax in Germany — even in the case of intragroup contributions — increasingly is becoming the focus of tax audits.

Multinational enterprises are facing increased inquiries from the German tax authorities during their income tax audits regarding payments of insurance premiums made to foreign insurers or for insurance covering foreign parent companies for risks relating to Germany. The inquiries generally relate to the insurance premium tax (IPT), and aim to ensure the proper application of section 1(3)(3) of the Insurance Premium Tax Act (IPT Act) that has been in effect since 1 January 2013.

The IPT is levied on insurance premiums paid to an insurance company for insurance contracts that cover risks relating to Germany, as defined by law. The statutory tax rate is 19%. In principle, the insurance company is required to file a tax return and is responsible for the actual payment of the IPT if it is resident in the EU/European Economic Area (EEA). The policyholder is the tax debtor and may be liable for unpaid IPT. However, if neither the insurance company nor a representative authorized to receive the insurance premiums has a registered office or permanent establishment (PE) in the EU/EEA, the obligation to file tax returns and pay IPT is shifted to the policyholder, even if the policyholder is not resident in Germany.

Under section 1(3)(3) of the IPT Act, a German tax liability may arise for a nonresident policyholder with respect to insurance relationships with insurers established outside the EU/EEA that directly or indirectly relate to enterprises, PEs or other institutions located in Germany that are within the scope of the German IPT Act. In particular, this covers insurance for companies that protects the facilities and employees of German enterprises or PEs against direct or indirect risks, such as comprehensive general liability insurance and professional liability insurance.

Fiscal years as from 2013 currently may be subject to income tax audits, in which the application of section 1(3)(3) of the IPT Act also is increasingly being examined. This affects, in particular, German companies with parent companies resident in non-EU/EEA country (especially in the US), which usually on-charge part of the insurance premium to their subsidiaries in the course of an intragroup allocation.

As noted above, if insurance relationships are concluded with insurance companies that are established outside the EU/EEA and the insurance covers German risks, the policyholder is liable to pay the IPT (under section 7(6) of the IPT Act), regardless of the policyholder's place of residence. For example, if a US parent company concludes a general liability insurance contract that also covers a German subsidiary or German PE, the US corporation is liable to pay German IPT.

In addition, the German subsidiary also may be liable to pay IPT (under section 7(7)(3) of the IPT Act), if the subsidiary pays a fee to its foreign parent that is the policyholder, in exchange for insurance coverage. This is likely to be the case on a regular basis, as premium shares usually are passed on to insured subsidiaries in the course of intragroup allocations.

Even though IPT cannot be determined by the local tax offices (since the federal tax office (FTO) has had this responsibility since 1 July 2010), the necessary tax information to calculate the tax often is requested during the course of income tax audits by the local offices, and forwarded to the FTO via a control mechanism.

In the case of groups of companies, existing insurance relationships should be reviewed and, if necessary, any relevant premiums and IPT amounts should be reported to the FTO.

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