

Compliance-Trap in International Insurance Programs

Tax Declaration Duties of Insured Domestic Companies and Foreign Group Management

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In Brief

Insurance premiums paid by a foreign group entity to an insurer domiciled outside the EU or EEA are subject to German Insurance Premium Tax (IPT) as far as these premiums are attributable to risks relating to a subsidiary or a permanent establishment in Germany.

This particularly affects German subsidiaries and permanent establishments that are (co-)insured under international (liability) insurance programs or other master policies for the entire corporate group.

Since the responsibility for IPT was shifted to the Federal Central Tax Office (BZSt), there has been an increased focus on IPT. Since then, we have noticed an increased number of notifications made to the BZSt during the tax audits of German subsidiaries and permanent establishments ("PE"); where the subsidiaries/PEs make compensation payments to their respective parent company (or other group company) for insurance premiums passed on - especially where the parent is not domiciled in the EU. If it cannot be proven that the insurer has paid German IPT to the BZSt, the co-insured subsidiary is also liable for the IPT.

In practice sometimes a suspicion of reckless tax evasion or even tax fraud leads to the initiation of penalty- or criminal proceedings. Because of the relatively long limitation period of seven or more years, it is not only important for affected companies to be familiar with their obligations with regard to IPT, but also to check whether they have paid sufficient attention to their IPT compliance duties in the past. Double taxation with domestic and foreign IPT can only be avoided by acting in time within the limitation periods.

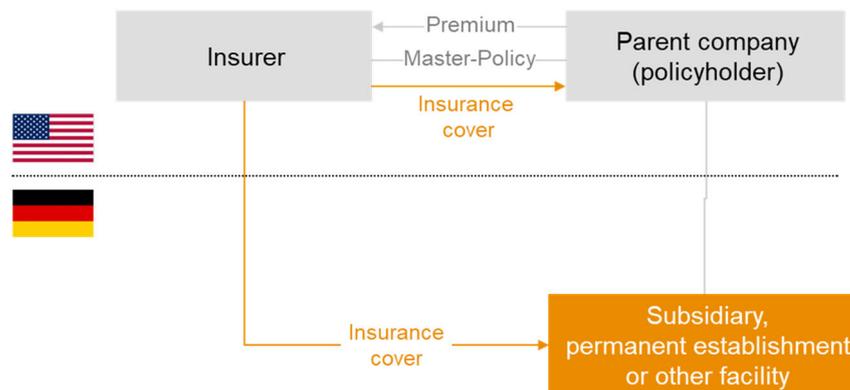


Master-Policy

A master-policy exists if a company insures not only its own risks but also the risks of other group companies or permanent establishments, in particular those located abroad. In addition, local insurance policies are often taken out in the countries where the subsidiaries and operating facilities are located.

Insofar as a risk located in Germany is insured, there is an IPT liability in Germany. This also applies if the German companies covered by the insurance contract do not make any compensation payments to the parent company.

Example



- The parent company has concluded a master-policy with an insurer located outside the EU/EEA (third-country insurer). The worldwide insurance cover includes all group companies and thus also risks located in Germany.
- The premium portion of the master policy attributable to risks of subsidiaries or permanent establishments in Germany has been subject to German IPT since 2013 in accordance with Section 1 (3) No. 3 of the German IPT Act (VersStG), even in the case of a third-country insurer, which is often overlooked in practice.
- Problem: In principle, insurers are obliged to declare and pay the IPT to the BZSt. However, this does not apply to third-country insurers. Therefore, in most cases, the tax payment obligation is transferred to the policyholder, i.e. the foreign parent company.
- Payment of IPT on any additional local policies taken out in Germany does not cover the IPT liability on the pro rata premium of the master policy for risks located in Germany. The same applies if the local policies are reinsured by the master policy.

In the example case, the U.S. parent company would in principle be obliged to declare and pay German IPT for the premium portion of the master policy covering risks located in Germany (possibly supported by its German subsidiary). The German subsidiary is also liable if it pays compensation. Since there is joint and

several liability between the insurer, parent company and subsidiary, the BZSt usually gives priority to the German company for reasons of practicability.

Practical Advice

If it is discovered (only) in the course of a tax audit that no IPT has been declared and paid in Germany, although there is a tax liability in Germany due to a master-policy, this may possibly lead to consequences under criminal tax law.

Furthermore, charges up to EUR 25,000 may be imposed for late filing of IPT in accordance with Section 152 of the German Fiscal Code (Abgabenordnung).

It is therefore advisable to check the individual IPT compliance duties as early as possible, preferably before an IPT audit is initiated by the BZSt at the German company. In our experience, a subsequent coordination with the BZSt including immediate registration for IPT and tax filing can in most cases avoid unpleasant consequences for the companies involved.

About Us

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