Keeping Up with Tax for Insurance

March 2020 – International edition

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Introduction

Welcome to our international edition of Keeping Up with Tax for Insurance. As promised in our previous edition, we have broadened our horizons this month and asked our PwC network of firms to provide you with updates on topical tax matters in key insurance territories around the globe. This is our most comprehensive international edition yet, and we hope you find the breadth of content in here informative and helpful!

Given this edition focuses on international tax matters this month, we did want to briefly highlight the following articles on UK tax and broader commercial matters in case you felt you were missing out:

- As you'll all be aware, the world has been keeping a careful eye on Coronavirus (or COVID-19, to be official!). Our specialists in the PwC Global Crisis Centre have put together a webpage here to highlight the issues that insurers need to consider when responding to this (potential) crisis.
- As part of legislation bringing about the UK's withdrawal from the EU, regulators have confirmed that the Temporary Permissions Regime (TPR) and other important transitional powers ensuring continuity of operations for EEA firms in the UK will now begin at the end of the Brexit transition period on 31 December 2020. This will provide additional clarity and certainty to EEA firms passporting into the UK. See here for our summary briefing.
- PwC's 23rd CEO Survey has revealed UK business leaders are planning a practical and purposeful response to economic uncertainty. Here, Marissa Thomas, PwC's UK Tax Leader, explains how CEOs are shifting gear to respond to increased uncertainty and volatility.
- The FCA has recently published its final rules on signposting to a new travel insurance directory for consumers with medical conditions. Find out what the rules mean for insurance firms in PwC's At a glance publication here.
- HMRC recently released an interesting example of their ongoing commitment to tackling international tax evasion, working with authorities from a number of countries through the recently formed Global Chiefs of Tax Enforcement - J5 Alliance, see here.
- Earlier this month, the government announced a number of significant changes to the National Minimum Wage (NMW) legislation and enforcement regime. Up to one third of employees could be impacted by the announcement of changes. Learn more about the changes and what you need to do next here.
- HMRC have released their Employer Bulletin February 2020 which includes important updates on HMRC's view on "legitimate expectation" of trivial benefits as well as on IR35 and termination payments.
- Finally, the new Chancellor of the Exchequer confirmed the date for the UK budget as 11th March 2020. Look out for more on that in next month's edition!

I hope you enjoy the articles that we have put together, and as always please get in touch with me or your PwC team if there is anything that you would like to discuss further.

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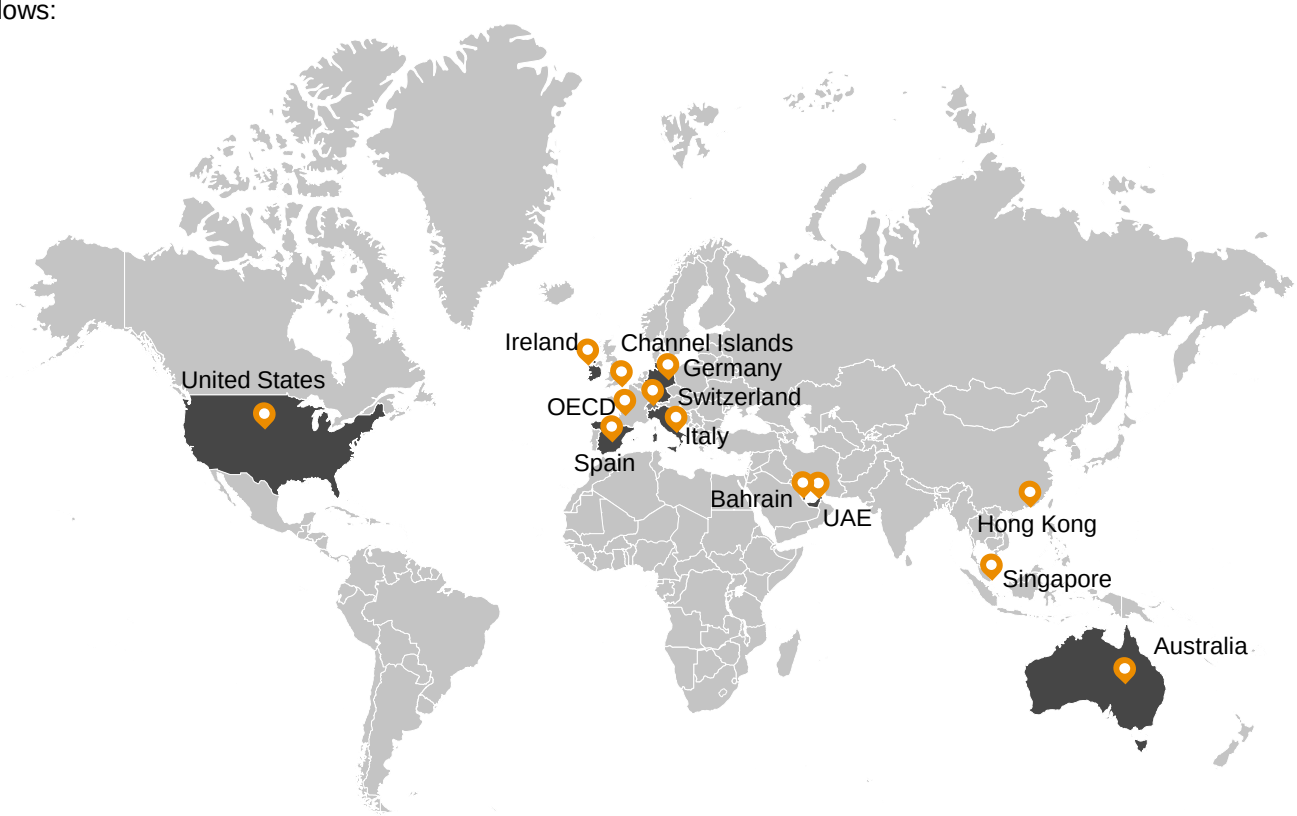
Contents

Given the breadth of content this month, we thought it would be useful to include a contents page. Our articles are as follows:



Feel free to skip ahead to articles on the territories most relevant to you. I'm sure our colleagues won't take it personally...

OECD

New transfer pricing guidance on (captive) insurance

Overview

On 11 February 2020 the OECD issued the Transfer Pricing Guidance on Financial Transactions ('OECD FT paper') which will soon become Chapter X of the OECD Guidelines. For the first time, the OECD Guidelines will include specific guidance on insurance. This guidance is expected to be incorporated into domestic law in many territories, including the UK, over the next six to twelve months.

One section of the paper is focused on captive insurance, and it was originally drafted with captives of non-insurance groups in mind. However, the read across to insurance generally (and particularly for captives within an insurance/reinsurance group) is clear.

The OECD FT paper covers a broad range of topics, from the commercial rationale for captive insurance to the use of fronting and agency sales. Of most relevance to the (re)insurance sector are two areas that have a direct and immediate impact on how to assess intra-group reinsurance arrangements.

Diversification and Group synergies: time to share the benefit

Many tax authorities are concerned that captive insurance has been used in situations lacking commercial rationale. With this background, the OECD FT paper proposes certain factors that indicate the genuine and appropriate use of (captive) insurance.

Two of these indicators evidencing commercial rationale are diversification and pooling of risk. In the UK, HMRC has, for some time, been focused on capital benefits and diversification as justification for internal reinsurance arrangements; HMRC's approach to Diverted Profits Tax is a case in point. The take-away for many (re)insurance groups is that a much broader range of tax authorities will now focus on diversification and capital efficiency, meaning that the techniques or models developed for the UK can be leveraged to other markets.

Additionally, the OECD FT paper identifies other commercial benefits which arise from "group synergies". One example cited is where a group aggregates risk in a single vehicle in order to access the third party reinsurance market more effectively. Where this is the case, the OECD now expects the benefits achieved (better rates or rebates, optimised terms, capital efficiency and so on) to be shared by the group reinsurer with the underlying cedants through the pricing or terms of the intra-group reinsurance contracts (IGRs).

For some, this will have significant implications where IGRs are priced including a capital loading. It will be important to evidence that the capital attributed to that particular contract considers the expected commercial benefit, such as capital efficiency, from pooling the risks with those risks ceded under other IGRs.

One practical area of challenge will arise when the group reinsurer has substantial third party business; how much diversification benefit should be attributed to internal business and how much to third party business?

Combined Ratio vs Return on Capital: raising the standard

The OECD FT paper addresses directly the question of the most appropriate approach to pricing IGRs. Recognising that this paper focuses on captive insurance, a particular concern is around capitalisation. This plays out in how the OECD recommends transfer pricing principles should apply.

In brief, the OECD advises that the overall remuneration of the (re)insurer is to be calculated applying a two-stage approach: (i) an arm's length (benchmarkable) combined ratio for the (re)insurer, plus (ii) an arm's length return on the appropriate amount of investment assets. The sum of these is the pre-tax profit for the (re)insurer. At a practical level, this methodology addresses the overall profitability for the insurer but does not help in determining the arm's length price on individual IGRs.

Whilst this approach will assuage tax authorities' concern on the level of capital and assets in the context of captive insurance, it also guides what tax authorities will expect when looking at the pricing of IGRs.

Historically, a common approach to IGR pricing has been to rely on a return on capital analysis. The use of return on capital has certain practical benefits, including that it can be applied when looking at lines of business where capital intensity varies. This is unlikely to be the case with the combined ratio benchmarks recommended by the OECD, which are much more sensitive to capital intensiveness. In practical terms the OECD's approach, therefore, raises the bar on comparability.

OECD

New transfer pricing guidance on (captive) insurance

Key takeaways

For the first time, the OECD has set out a consistent approach to pricing of insurance business. This is good news. It means taxpayers can expect more similar perspectives, viewpoints from and challenges by tax authorities, making it more straightforward to adopt, explain and defend a globally consistent approach to transfer pricing.

Those insurance companies with UK operations have a head start; some of the principles set out by the OECD will be familiar such as the focus on capital efficiency and, in particular, diversification. For others, these represent a new way to think about IGRs. In both cases, there remain unanswered practical questions such as the application of combined ratio approaches to pricing individual contracts.

Overall, however, the paper provides welcome clarification and guidance even if, in the short term, insurance groups may need to rethink or supplement their existing transfer pricing of intra-group reinsurance to align with this new way of thinking.

For a deeper discussion on how the OECD paper will impact the pricing of your intra-group reinsurance policies, get in touch with the authors or your normal PwC contact.

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United States

Overview of recent developments

2017 Comprehensive U.S. Tax Reform:

With the passage of the Tax Cuts and Jobs Act ('TCJA') in late 2017, fundamental changes were made to the U.S. system of taxation, with particularly significant changes for multinational enterprises. Among other things, the statutory corporate tax rate was lowered from 35% to 21%, the alternative minimum tax was repealed, and a modified territorial tax system was implemented. To strike a balance with the lower rate, many complex rules were added which seek to grow and prevent the erosion of the U.S. tax base.

Two of the most significant new rules were the Base Erosion Anti-abuse Tax ('BEAT') and Global Intangible Low-Taxed Income ('GILTI'). The BEAT, which imposes a minimum tax on certain applicable taxpayers calculated with reference to deductible payments made to non-U.S. related parties, significantly impacted the industry's approach to reinsurance from the United States. GILTI, due to the specific mechanics of the computation and the fact that insurance groups tend to have little in the way of tangible depreciable assets, causes most U.S. parented insurance groups to continue to remain subject to U.S. tax on their worldwide income.

In addition, the TCJA included a number of provisions that specifically impacted the taxation of U.S. insurance companies. The TCJA made significant changes to the rules for computation of reserves for both life and P&C companies, changed the percentage of expenses subject to capitalisation under the DAC rules and the amortization period for such capitalised expenses. There were also significant changes to the rules for the utilisation of net operating losses ('NOLs'). Life insurance companies, which under pre-TCJA law could offset 100% of their taxable income with NOL carry-forwards and could carry unused NOLs back three years and forward fifteen years, can now only offset 80% of taxable income with NOLs. Life companies also may not carry back any unused NOL but may carry it forward indefinitely. The NOLs of P&C insurance companies continue to be available to offset 100% of taxable income and may be carried back two years and forward twenty years.

Recent Developments Impacting Insurance Groups

Tax developments during 2019 were largely the result of regulatory guidance issued implementing and interpreting the provisions of the TCJA.

Domestic Guidance

Treasury and the Internal Revenue Service ('IRS') released guidance on a number of topics impacting U.S. insurance companies. Topics impacting life companies included guidance on accounting for changes in the basis for computing reserves and changes in methods of accounting to comply with the TCJA. For non-life insurance companies, guidance was issued addressing loss reserve discounting.

New Final and Proposed BEAT Regulations

At a high-level, the BEAT is a minimum tax on U.S. corporations that have average annual gross receipts of at least $500 million and a "base erosion percentage" in excess of 3%. Generally, the base erosion percentage is the ratio of deductible payments made to a foreign related party over the aggregate deductions allowable during the taxable year.

Treasury finalised regulations on 6 December 2019 that provide greater clarity on the application of the BEAT to insurance companies (the 'Final BEAT Regulations').

In particular, the Final BEAT Regulations include:

- A new exception for related-party claims payments made by U.S. reinsurance companies, excluding amounts paid or accrued to a non-U.S. related party for losses incurred and claims and benefits to the extent such amounts are allocable to amounts required to be paid by the non-U.S. related party under an insurance, annuity or reinsurance contract to a third party. The regulations specify that payments covered by the claims exception should be excluded from the denominator of the base erosion percentage.
- A clarification that amounts paid for losses incurred and claims and benefits are included in the denominator of the base erosion percentage calculation unless they are excluded under the related-party exception.

United States
Overview of recent developments

- A clarification that no netting is permitted for reinsurance premium payments made to a non-U.S. affiliate, regardless of the nature of the contract or how the netting is accomplished (e.g. no netting allowed for economically-offsetting ceding commissions).
- AMT credits, like overpayments of taxes, and taxes withheld at source, do not reduce adjusted regular tax liability for purposes of calculating a taxpayer's BEAT liability.

Treasury also released new proposed regulations on 6 December 2019 that among other things provide an election for taxpayers to waive deductions, which could help a taxpayer to reduce the base erosion percentage below the threshold (but would have the effect of increasing taxable income and the regular tax liability).

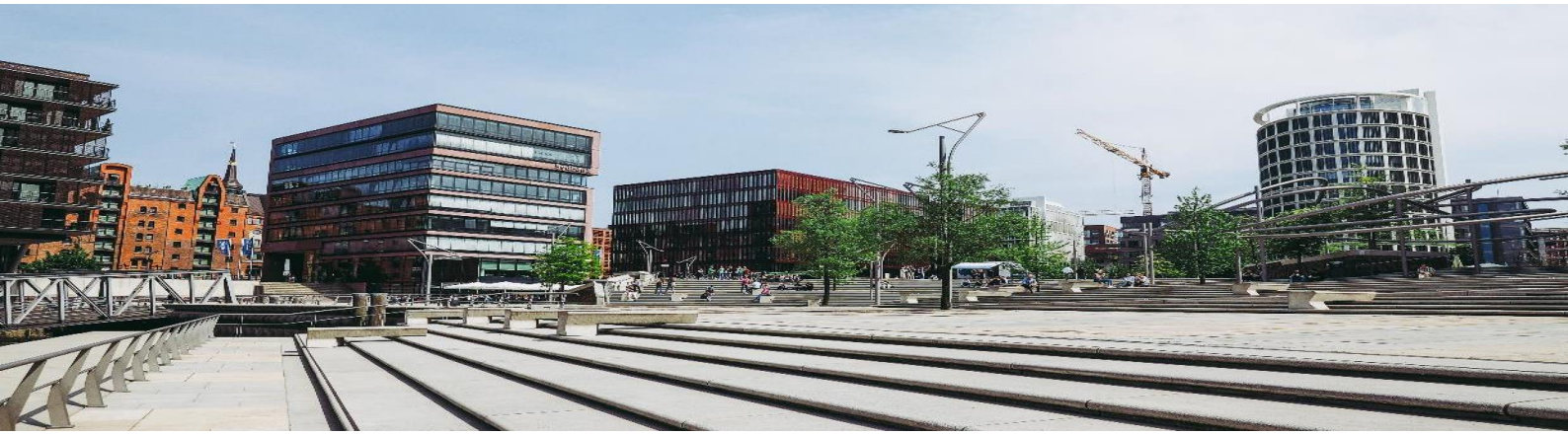
GILTI High-Tax Exception:

In response to numerous comments from taxpayers, including U.S. shareholders of non-U.S. insurance companies that have now become subject to GILTI, the Proposed GILTI Regulations issued in June 2019 provide for a high-tax exception election from GILTI.

In order for the proposed GILTI high-tax election to apply, (1) the controlling domestic shareholder of a controlled foreign corporation ('CFC') must make an affirmative election and (2) the CFC income must be subject to an effective foreign tax rate that is greater than 90% of the 21% corporate tax rate (i.e. 18.9%). The effect of the election would be to exclude from a U.S. shareholder's taxable income the GILTI income (and the foreign tax credits associated with that income) which qualifies as high-taxed in a particular year.

Looking Ahead

2020 is expected to be another year heavy with additional guidance from Treasury and the IRS as the hope is that all TCJA related guidance packages are released prior to the end of the year. Final guidance on BEAT and GILTI is expected along with guidance addressing hybrids, interest expense deductibility, NOLs, passive foreign investment companies, distributions from foreign affiliates and a host of other topics.



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Ireland

Overview of recent developments

The Irish tax system has undergone significant change in recent years, with 2019 and 2020 in particular having seen a large amount of legislation introduced. These changes are partly driven by the requirements of the EU Anti-Tax Avoidance Directive ('ATAD'), but also wider expected reforms to the international tax regime and domestic reforms in Ireland

Although there is a significant amount of change being introduced, and some of the legislation is complex, we are not typically seeing a large impact on the overall tax rate for most insurance groups. We have included a number of these changes below and their impact.

Controlled Foreign Company ('CFC') Rules - 1 January 2019

In 2019 for the first time, CFC rules were introduced in Ireland. Importantly the rules only attribute CFC income to an Irish company where it arises from non-genuine arrangements put in place for the essential purpose of avoidance of tax, and where relevant activities take place in Ireland. Also to the extent any activities take place in Ireland, the CFC rules will not apply where the arrangements are on an arm's length basis or are subject to the Irish transfer pricing regime. Ultimately, insurance groups undertaking commercial activities and transacting on an arm's length basis should not suffer any additional Irish tax as a result of these rules.

In addition there are also a number of exemptions, for example for CFCs with low accounting profits or low profit margins, or where the CFC pays a comparatively higher amount of tax in its territory than it would in Ireland.

Exit Tax - 10 October 2018

Historically, it had been possible for companies to migrate tax residence out of Ireland with no exit tax, due to a wide range of exemptions available. Under the new rules, if assets leave the Irish tax net for any reason, e.g. as a result of a migration or any other transfer, any unrealised capital gains will be taxed. However, the rate applied will generally be 12.5% and not the chargeable gains rate of 33%. The exit tax also applies to transfers of assets between head office and branches, which is particularly relevant for the insurance sector given many insurance companies in Ireland have foreign branches.

Hybrids - 1 January 2020

After much consultation with industry, anti-hybrid rules were introduced from January 2020. Whilst there is a lot of complexity in the rules, they have been introduced in a way that is intended to be as practical as possible with no additional limitations beyond those required by ATAD/BEPS Action 2.

For international insurance groups operating in Ireland, it is worth being mindful that although there is a lot of crossover, the actual rules in each country do differ and it is necessary to consider the specific Irish rules when reviewing the impact of the hybrid rules more generally. It is particularly relevant for those groups who also have US operations or tax filings, given the interaction with the 'check the box' regime and other US tax measures.

Interest limitation rules - 2021?

It is likely that Ireland will introduce interest limitation rules from 2021, although this has yet to be confirmed. At this stage there is no indication that these would go beyond the minimum required from ATAD (being similar to the BEPS Action 4 rules). A key question, particularly for those groups with financing companies in Ireland, is whether an exemption for the insurance sector will be introduced. If an exemption is introduced, it will be important to understand whether it will exempt only the regulated insurance company (risking giving a distorted view of the group's position under these rules) or would apply to the Irish group as a whole.

Ireland

Overview of recent developments

Transfer pricing - 1 January 2020

As part of the updates to transfer pricing rules from 1 January 2020, the rules have been extended to cross border non-trading and capital transactions. Domestic transactions can still be exempt, subject to a main purpose test.

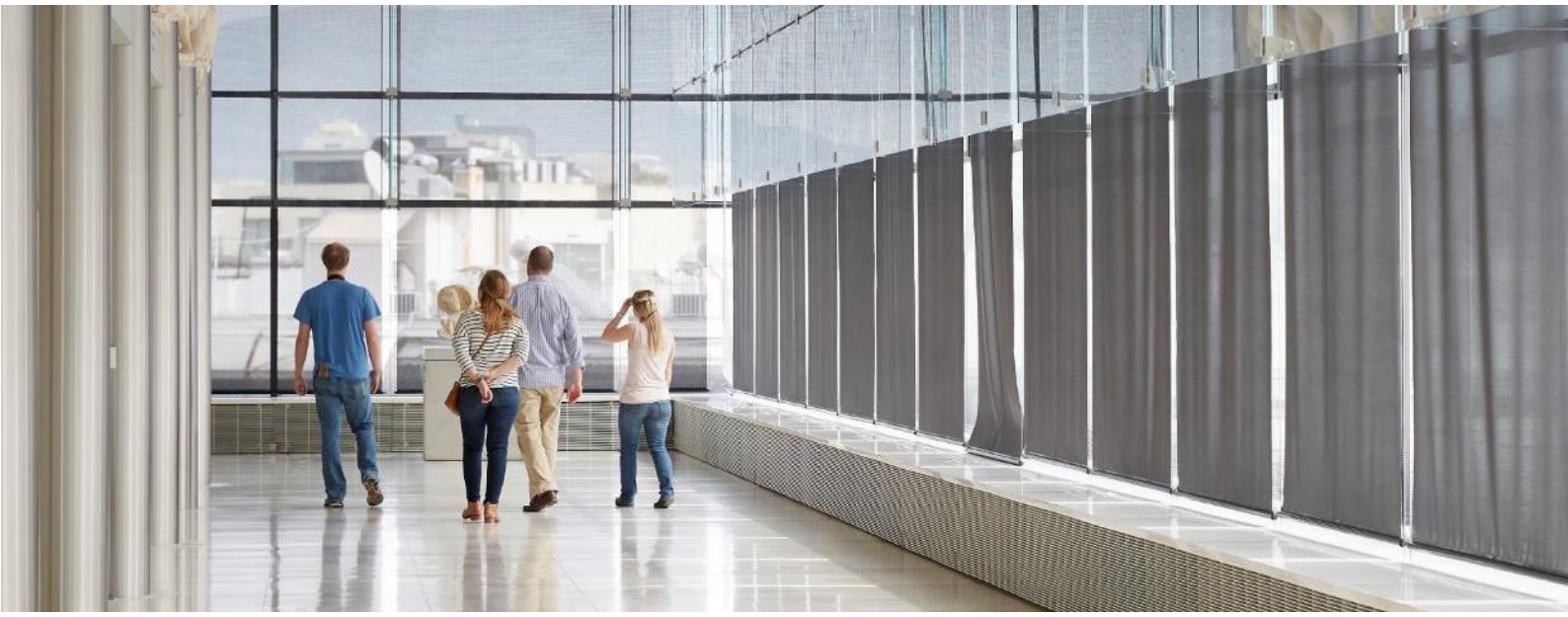
There are also updated documentation requirements, in line with OECD guidance. This brings Ireland in line with all other OECD countries and will mean that documentation needs to be on file when the 2020 tax returns are submitted.

Importantly in relation to the Section 110 regime, profit participating loans are not within the scope of these extended rules.

Participation Exemption

One area where many in the insurance industry have been hoping for new rules is in relation to a participation exemption. Ireland currently operates a worldwide regime whereby dividends from subsidiaries and profits from overseas branches are fully taxable in Ireland with relief available for overseas tax paid, so in theory there should be no additional Irish tax on overseas profits under current rules. However, there is a lot of complexity in applying the rules in practice. The introduction of a participation exemption had been under discussion, and would be welcomed by many insurance groups. However, this has been put on hold pending broader expected reforms to the tax regime.

Insurance and other sectors operating in Ireland are continuing to make a strong case to the Department of Finance as to why this should be introduced as soon as possible, so there may be further developments in the short/medium term.



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Germany

The taxation regime for investment funds – a complex compliance challenge

The introduction of the "new" Investment Tax Act 2018 ("ITA") has fundamentally changed the taxation of investments in investment funds, not only for asset managers, but also for any investor. The taxation regime for investment funds is one of the most complex and challenging tax laws in Germany and two years after the tax reform a couple of relevant practical questions continue to be unclear. The insurance sector is by far the largest investor in investment funds, hence, the tax compliance for investment funds is an important topic for any (life) insurance company operating in Germany.

The challenges

From an investor perspective, fulfilling the German tax compliance obligations under the ITA requires:

- the actual application of the law - especially for special investment funds, which are of great relevance to the insurance sector, many detailed regulations need to be taken care of, starting with several "transparency" options and ending with the correct analysis and treatment of multi-layered special investment funds structures.
- once the correct tax analysis is done, extensive calculations are required to determine the values according to the new ITA and to calculate and develop the transitional values.

Amongst other things, insurance companies face the following challenges:

- Data procurement;
- Preparation of transaction data (e.g. purchases and sales);
- Balance sheet corrections (e.g. advance lump sum, retention of earnings);
- Off-balance sheet adjustments (e.g. partial exemption, investor gains);
- Declaration on the separate determination of the (fictitious) profit;
- Treatment of the disposal fiction in the commercial and tax balance sheet.

Most of these calculations must be done based on individual fund transactions, i.e. the complexity of the required calculations increases by both the size of and the activity within the portfolio. As insurers typically require an active, continuously changing portfolio, the insurance sector is particularly affected by this.

This is challenging enough for the filing of the annual tax returns. However, the taxable income resulting from investment funds usually has a large impact on the tax charge in the financial statements. As a result, it is necessary to have reliable estimates of these numbers for the financial statements within a very limited time and under the usual pressurised year-end workload.

Facing the challenges

The challenges can only be tackled by using standardised end-to-end processes with a clear structure starting from the data procurement to the implementation of the calculation results in the tax calculations/tax returns. The actual calculations should preferably then be automated, taking Excel and error-prone and labour intensive manual work out of the equation. The goal for our insurance clients is to have an efficient and effective way to face the various challenges and improve the quality of tax data regarding investment funds.

Next steps for Insurers

Given the complexity of these rules and the volume of calculations typically required, we recommend insurers in Germany review their existing processes and consider the scope for automation/process simplification within these calculations.

For more information on the digital solutions managing the different challenges in the field of investment funds taxation, please contact one of the authors, or your usual PwC contact.

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Switzerland

Corporate tax and Stamp Duty update

Corporate Taxes in Switzerland

Companies resident in Switzerland are subject to Swiss corporate income tax (CIT) on their taxable profits generated in Switzerland. Swiss tax rules on branches provide flexible structuring options for internationally operating insurers and reinsurers;

- foreign branch income is unilaterally exempt, whilst losses may be absorbed by the Swiss head-office.
- foreign legal entities having a branch in Switzerland are subject to limited taxation in Switzerland in line with the OECD Model Tax Convention on Income and Capital. The branch's income is, in general, subject to the same CIT rules that apply to Swiss corporations.
- there is no Swiss withholding tax (WHT) on profit repatriations from the Swiss branch to its foreign head office.

Taxable income is generally determined based on the statutory financial statements, but there is currently no obligation for unregulated branches of foreign entities to produce Swiss statutory financials. Instead their tax basis is in practice often determined by adjusting international GAAP branch accounts for mandatory Swiss accounting principles, which usually minimises cash tax through deferral of income.

There is currently a proposal to subject Swiss reinsurance branches to regulation in Switzerland which would likely require them to also produce Swiss GAAP branch accounts. This would have a tax impact as well, as tax authorities will likely base the tax accounts on the statutory accounts once available. This change of the tax base may have some transitional effects (e.g. URGL, FX-translation gain/loss, tax treatment of deferred acquisition costs), whilst also providing potential tax opportunities such as the deferral of income taxation through creation of equalisation reserves in the statutory accounts (based on reserving policy).

After deduction of any unused tax losses from the previous seven tax periods, the remaining taxable income is subject to a combined tax rate of between 12% and 21% (federal, cantonal, communal level) depending on the business location within Switzerland.

A participation exemption is available for income and capital gains from qualifying equity investments.

Ruling process

Generally, Swiss taxpayers may obtain advance rulings on planned future structuring. Once agreed, these are legally binding for tax authorities, subject to the full disclosure of facts and circumstances and the implementation according to the disclosure.

Double tax treaty network

Switzerland has a wide network of double tax treaties minimising foreign WHT leakage on investment income. Swiss treaties generally also protect Swiss legal entities (including its foreign branches) from foreign IPT (incl. US FET) on premiums written.

Although the Multilateral Instrument entered into force on 1 December 2019, its entry into effect for Swiss covered tax agreements is postponed until Switzerland has renegotiated the relevant double tax treaty.

Switzerland has no CFC regime in place for income from foreign subsidiaries and does not plan to introduce respective legislation in the near future.

Swiss Corporate Tax Reform

After a positive public vote, all cantons with major business locations implemented the provisions of the Swiss corporate tax reform into their cantonal tax laws with effect from 1 January 2020.

Impact on insurers in Switzerland

Swiss resident insurance and reinsurance entities and branches benefit from a relatively stable tax environment and are usually not directly affected by the abolishment of privileged cantonal tax status. The main impact of the Swiss Corporate Tax reform on insurance entities and branches results from the tax rate reductions. Central Switzerland Cantons (e.g. Zug, Lucerne) reduced their ordinary tax rates to approx. 12%-12.5% for tax periods 2020 onwards. Zurich will reduce to 19.7% as of 2021 in a first step and targets 18.2% at a later stage.

Additionally, Zurich introduced a notional interest deduction for excess capital, noting though the implementation may render this measure largely ineffective for most insurance entities. Insurers should seek specific advice on this where this may be relevant.

Switzerland

Corporate tax and Stamp Duty update

Swiss resident Captives and Holdings

For insurance groups with Swiss based holding entities, financing companies or captives that were taxed under a special regime, transitional rules may be available now these regimes are being phased out. A combination of an exempt tax basis step-up and its subsequent tax effective depreciation is already available in most cantons. A separate tax rate approach instead of a step-up is available to minimize tax accounting impacts. Some cantons even allow a combination of both approaches. Each company affected needs to assess which option best fits its business needs.

These transitional rules may mitigate the impact of the abolition of these regimes for insurance groups for up to ten years, but this needs careful thought.

Foreign insurers moving to Switzerland

Similar to the transitional rules mentioned above, the practice of most cantons in connection with relocations into Switzerland has been codified into law and also applies to the transfer of functions or assets into Switzerland.

Generally, an exempt step-up of the tax basis to fair market value (including self-created goodwill) is available upon relocation/transfer. This may then be amortised for its tax purposes under an approach agreed with each canton (over up to ten years for self-created goodwill).

Stamp duty on insurance premiums in Switzerland and Liechtenstein

In most jurisdictions around the world, insurance premiums are subject to indirect taxation in the form of VAT, GST, stamp duty or a specific tax, usually known as insurance premium tax (IPT). We have summarised below these requirements in Switzerland and its neighbour Liechtenstein.

The territory of the Principality of Liechtenstein is deemed to be domestic in terms of stamp duty under the Customs Treaty of 29 March 1923 with regard to the Swiss Stamp Duty Law. Hence, the same provisions apply in Liechtenstein as in Switzerland. The following statements therefore apply to Switzerland and Liechtenstein, even if only Switzerland is mentioned for simplification.

Background on IPT/Stamp duty

In general, insurance premiums for most property and casualty insurance lines are subject to IPT of 5% and single insurance premiums for redeemable life insurance products are subject to IPT of 2.5%. Certain lines of life and health insurance as well as property and casualty insurance are exempt from IPT. Reinsurance is also exempt from IPT.

IPT is levied on insurance premiums paid for insurance contracts that:

- are either part of the Swiss portfolio of a domestic insurer subject to Swiss supervision; or
- are concluded by a Swiss insured person/policyholder with a foreign (non-Swiss) insurer not subject to Swiss supervision.

In the first case, IPT is owed by the Swiss regulated insurer, which is basically obliged to declare and settle the IPT with the Swiss Federal Tax Administration (FTA) and there is no obligation for the policyholders. However, if the insurance is taken out from a non-Swiss insurer the Swiss insured person/policyholder would become liable for Swiss IPT on the paid premium. Hence, the Swiss policyholder would be liable for IPT in Switzerland (a foreign insurer which is not regulated in Switzerland generally does not become liable for Swiss IPT). In this case, the Swiss policyholder is bound to self-register themselves with the Swiss FTA and to declare and settle the payment of the IPT.

This latter point on self registration is probably the aspect of the Swiss IPT regime that creates the most complexity for international insurance groups. In particular, this obligation can be triggered on certain set-ups of international insurance programs so this requires careful review.

Switzerland

Corporate tax and Stamp Duty update

Tax audits more focused on IPT

Although we have not seen an increased number of tax audits from the Swiss FTA overall, we have recently seen an increased focus from them on IPT compliance. The focus seems to be on companies in the trading, shipping and pharmaceutical sectors but also on other internationally operating groups. Due to the nature of their business, companies operating in these sectors often conclude insurance contracts with non-Swiss insurers and/or cover Swiss entities in international insurance programs. As above, these can all trigger Swiss IPT obligations. In respect of international insurance programs, the Swiss FTA differentiates between different agreement programs and contracts (e.g. centralised versus decentralised programs) in order to qualify the insurance premium as taxable or not taxable.

To add additional complexity, in most European countries IPT is typically charged based on the 'Location of Risk' rules. Under these rules, if the risk is located in a certain country then the respective IPT should be paid to the respective tax authority based in the country in question. However, the key point for Swiss IPT is the 'Location of the Policyholder'. For example, as soon as a Swiss company concludes an insurance contract to cover domestic risks, the contract is likely to be subject to Swiss IPT even where the risks are insured in another country.

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Potential tax risks could be significant

In these audits, the Swiss FTA have found that some companies are unaware of the fact that the Swiss policyholder is obliged to self-declare and pay the IPT to the Swiss FTA if they conclude an insurance contract with a foreign insurer that is not supervised by the Swiss regulator. When a lack of payment is determined during a tax audit for instance, besides the outstanding IPT payment there is also a late payment interest of 5% per annum which will be levied by the Swiss FTA. Considering the applicable five-year limitation period, the resulting tax risk could become significant if the IPT obligations are not met.

Next steps for insurers

As noted above, the Swiss Stamp and IPT Law is complex, incorporating a number of features that are not in line with international norms but also many exceptions. Hence, when a non-Swiss insurer concludes an international insurance program where one or several Swiss companies are covered, we recommend the insurer assesses how this coverage is embedded in the insurance policy and whether Swiss IPT consequences could arise for the Swiss companies. Given the exemptions within these rules, it may be possible to establish an international insurance program which is either not subject to Swiss IPT costs, or at reduced costs. This will require careful thought on the part of the insurance group.

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Italy

AE rules on the new ANIA self-regulatory Code for coinsurance

Following queries from insurance groups (via their trade association, the ANIA), the Italian Revenue Agency (Agenzia delle Entrate or "AE") recently ruled on the VAT treatment of the contractual structure set out by the new ANIA self-regulatory Code for coinsurance. This opinion recognises the VAT exemption applying to amounts received by the coinsurance company where it is acting as an entrusted company.

A new contractual scheme has become necessary as a response to the significant litigation involving the Italian insurance sector for more than a decade, following the decision of the AE regarding the VAT treatment applicable to delegation fees. They concluded that the remuneration paid to the leading insurer by coinsurers for the management of co-insurance contracts is not exempt from VAT as it is considered an administrative service.

The litigation initially found in favour of the insurance companies, with numerous decisions of jurisprudence and two pronouncements by the Supreme Court in favour of the VAT exemption. In 2018, however, the Supreme Court changed its position on this matter, confirming that the delegation fees were subject to VAT, in line with the AE's view.

In order to address the findings raised by the AE and ensure a commercially viable business model going forward, ANIA drafted a new contractual model for the management of coinsurance contracts.

Specifically, the new ANIA contractual model involves one of the coinsurers (the 'entrusted company') being responsible for the issuing and management of the policies, acting on behalf of the policyholder and with the agreement of the other coinsurers. Under this new scheme, the entrusted company is directly remunerated by the policyholder through a share of the premium corresponding to the costs for the management and execution of the contract (so-called charging). The remaining part of the insurance premium is divided amongst the coinsurers (including the entrusted company) based on the percentage of risk taken by each company.

This new contractual structure substantially differs from the current model used in the insurance market for the issuing and management of policies under a coinsurance regime. The following differences exist:

- the model does not decide the leading company based on the so-called delegation clause, but rather the management of the contract is given to the entrusted company that operates on behalf of the policyholder.
- the entrusted company does not receive a commission for the management of the contract from the other coinsurers, but rather is remunerated directly by the policyholder.
- this remuneration is determined ex ante and at a flat rate when pricing the products.

In its response to the request for legal advice, the AE has specified that the question at issue does not concern the VAT treatment of delegation fees, which is subject to VAT in light of Italian case law.

Regarding the new contractual scheme, the AE recognised the substantial differences with respect to the previous model. They accepted that the share of premium received by the entrusted company for the management of the contract is VAT exempt, based on the following considerations:

- the responsibility to issue and manage insurance contracts includes activities that supplement the service to the insured party, as required by Community case law for the purposes of the exemption.
- the remuneration is directly conferred by the policyholder, a charge included in the premium, in line with normal insurance contracts.

The voluntary adoption of the new ANIA self-regulatory Code for Coinsurance will require insurance companies to assess the impacts on the pricing of their insurance products. They will need to calculate the management costs incurred by the entrusted company and it will also be necessary for them to update relevant contractual documentation to ensure that it is aligned with the new model.

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Spain

Insights on the Government's plan to reform the corporate tax regime

In brief

On 13 January 2020, Spanish Socialist Workers' Party (PSOE) and Unidas Podemos became the first coalition Government in Spain since 1931.

Their governing plan included significant tax reforms that are likely to modify the current Spanish tax landscape. The momentum behind these proposed reforms has been building, although the implementation of the proposed measures has yet to go through the required legislative process.

Of significant interest is the proposed introduction of a minimum taxation for large groups, which is aligned with the fundamental principles outlined by the OECD Pillar II. In addition, on 18 February 2020, the Spanish Council of Ministers adopted bills on Digital Services Tax and Financial Transactions Tax, which have been sent to the Congress for review and approval.

This article seeks to provide an overview of the proposed tax reforms, and areas of potential impact on insurers.

In detail

Minimum taxation for large groups

This measure implies the establishment of a 'minimum taxation' of 15%. This minimum tax would be increased to 18% for taxpayers subject to a 30% corporate tax rate (e.g. banks). Groups taxed under the tax consolidation regime and companies not integrated into groups but whose net turnover is equal to or greater than EUR20 million, would fall within the scope of this measure. It is expected that this minimum taxation will be applied to profit before tax, regardless of the taxable basis, thereby downplaying the effect of carried-forward losses or any taxable benefits, such as participation exemptions or R&D tax credits.

Whilst different in scope and form, this measure follows the guiding principles of the OECD work on Pillar II. It is not currently clear if these measures will be amended in due course to bring these into line with the final agreed Pillar II measures once these are issued by the OECD (noting of course there is likely to be strong international pressure to do so).

95% cap on participation exemption for dividends and capital gains

The limitation on the participation exemption and capital gains (foreign and domestic) is proposed to be reduced from 100% to 95%, with the aim to obtain a minimum taxation on income and profits derived from participation in other entities. This would also apply to capital gains from restructurings under the tax neutrality regime.

This proposed measure, if passed, will increase the effective tax burden on domestic and foreign dividends and capital gains of Spanish companies, disincentivising international activities of Spanish groups with an impact on Spanish acquisition structures.

Spanish REITs

Proposed changes are envisaged to the taxation of Real Estate Investment Trust (REITs), i.e. "SOCIMIs". The most notable change suggested is the introduction of a 15% corporate tax on undistributed profits and a 25% tax on SOCIMI profits not derived from real estate rentals.

Digital Services Tax

On 18 February 2020, the Spanish Council of Ministers adopted the bill for the Digital Services Tax. The objective of this tax, which is in line with the EU Directives proposal, is to levy an indirect tax on digital services where there is an essential contribution by the users to the value creation and where these users' contributions are monetised.

This new tax is structured as a 3% charge on the income generated by (i) online advertising services, (ii) online intermediation services and (iii) the sale of data collected from information provided by the user. Only companies with worldwide revenues of EUR750 million per annum, with a total amount of taxable revenues obtained in Spain exceeding EUR3 million per annum, would be subject to the Digital Services Tax.

The bill does not include a specific carve out for regulated financial services rendered by regulated financial entities, but this is expected to be in line with the OECD and EU proposal direction of travel and to be clarified upon the Congress and Senate process.

Financial Transactions Tax

On 18 February 2020, the Spanish Council of Ministers adopted the bill for the Financial Transaction Tax. This is an indirect tax of 0.2% to be charged on the purchase and sale of shares in listed Spanish companies with a market capitalisation in excess of EUR1,000 million, regardless of the residence of the financial intermediary. This new tax includes an exemption for acquisitions needed for market infrastructure systems to operate, business restructuring transactions and intercompany transactions.

Spain

Insights on the Government's plan to reform the corporate tax regime

The taxpayer will be the financial intermediary that transmits or executes the purchase order. Taxpayers would be compelled to prepare and submit the corresponding tax form on a monthly basis and a summary on an annual basis.

This measure is likely to affect investors, generating additional costs and thereby creating a lower volume of transactions.

Other measures

Other areas of further development include, among others, the introduction of greater control of crypto coins, prohibition of dual-use software and limitation of cash payments (e.g. limit of EUR10,000 - EUR15,000 for cash payments by individuals tax domiciled outside Spain).

The Government also intends to raise personal tax rates for taxpayers in the top income brackets (income higher than EUR130,000). Overall, the Spanish Government is planning to explore the taxation of large fortunes by modifying Wealth Tax fundamental principles.

Key takeaways

At present there is no clear indication of the effective implementation of the above measures, but these are likely to increase the tax burden of Spanish holding companies and multinational groups operating in Spain. Keeping abreast of the status of these legislative proposals is therefore deemed essential for insurers with presence in Spain.

As we are expecting further updates on these aspects imminently, businesses should continue to monitor the status of the proposed measures, assess their taxable presence in Spain and evaluate the impact of the proposed measures on their group structure, e.g. considering the introduction of a minimum taxation for large groups or the 95% cap on participation exemption for dividends and capital gains.

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Hong Kong
Overview of insurance tax regime

The insurance sector continues to receive strong support from the Government of Hong Kong Special Administrative Region (the "Government") due to its vision of maintaining Hong Kong as a global risk management centre and a regional insurance hub. This also supports Hong Kong's strategic role as part of the Belt and Road projects of the Chinese government.

Hong Kong has a simple and territorial-based tax regime (i.e. only Hong Kong sourced profits are taxed). Companies operating in the territory also enjoy relatively low corporate tax rate (currently at 16.5%). Life insurance companies are, by default unless they elect otherwise, taxed on 5% of their net insurance premiums from certain classes of business, whereas non-life insurance companies are effectively taxed just like other companies operating in the territory.

In addition to the simple and low tax regime, the Government also offers incentives to attract insurance companies to remain and/or set up new operations in Hong Kong. These started with captive and professional reinsurers enjoying concessionary profits tax rate (i.e. 8.25%) on their offshore general businesses. In the 2018/19 year of assessment, this incentive was further extended to all captive and professional reinsurers irrespective of their businesses (i.e. onshore, offshore, life or general businesses).

New tax incentives to be introduced in 2020

A Bill which is currently before the Hong Kong Legislative Council seeks to further extend the concessionary profits tax rate (i.e. 8.25%) to certain other pillars of the Hong Kong insurance industry as set out below:

1. All general reinsurance business of direct insurers;
2. Selected general insurance business of direct insurers;

This category of concession is intended to enhance the marine insurance and specialty insurance businesses in Hong Kong. However, since there is no dedicated class for marine-related risks or specialty risks in the Insurance Ordinance, all general insurance businesses are eligible for the concessionary profits tax rate except the following five types of risk or liability of domestic nature:

i. health risk;
ii. mortgage guarantee risk;
iii. motor vehicle damage and liability;
iv. employees' compensation liability; and
v. owners' corporation third party liability.

3. Licensed insurance broker businesses;

This category of concession is available for licensed insurance broker companies in respect of their business of placing:

- *all general and long-term reinsurance contracts with professional reinsurers;*
- *all general reinsurance contracts with direct insurers; and*
- *certain general insurance contracts (same as listed in 2 above) with direct insurers*

Other initiatives

Other than tax incentives mentioned above, the Government and the Insurance Authority are working on the following to enhance Hong Kong's position as a world leading insurance hub:

- modernising the insurance regulatory framework;
- enhancing competitiveness and promoting market development;
- facilitating Insurtech development; and
- ensuring adequate resources for the Insurance Authority

The proposed measures should provide more confidence to policyholders as well as incentivising insurance companies to set up their operations in Hong Kong. If you wish to discuss the above new tax incentives and whether they may benefit your business, please get in touch with us or your usual PwC contact.

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Singapore

Singapore Government Fiscal Budget 2020

The Budget for 2020 was tabled in Parliament on 19 February. A summary of the Budget can be found here.

Renewal for a further five years

The Insurance Business Development (IBD) umbrella scheme, which consolidated the various insurance tax incentives, was introduced in 2015. Under this scheme, concessionary tax rates apply to income from qualifying underwriting and investments. To further support Singapore's proposition as an Asian insurance and reinsurance centre, the Government announced as part of Budget 2020 that the IBD and IBD-Captive Insurance schemes, which were due to expire on 31 March 2020, will be extended until 31 December 2025. The concessionary tax rate remains at 10%.

To streamline and simplify the IBD umbrella scheme, the existing incentive for Marine Hull Liability ("MHL") will lapse after 31 March 2020. With the lapsing of the IBD-MHL scheme, insurers engaged in the MHL insurance and reinsurance business will instead be able to apply to the general IBD scheme.

All new and renewed IBD scheme awards approved on or after 1 April 2020 will be granted for a period of 5 years. Further details of the changes will be provided by the Monetary Authority of Singapore by May 2020.

The extension of the incentive schemes is a welcome move as it should help maintain Singapore's competitiveness as an insurance hub and attract new entrants to Singapore. However, there has been a lack of enhancement in the scope of the qualifying income under the IBD scheme. The excluded lines of businesses (i.e. fire, motor, work injury compensation, personal accident and health) also continue to pose practical difficulty in tracking, identification and apportionment of income by insurers.

The long-awaited change that is again not to be

In Budget 2020, the Minister announced an extension of the "13Z scheme". Under the scheme, gains derived by a divesting company from its disposal of ordinary shares in an investee company are not taxable if immediately prior to the date of share disposal, the divesting company had held at least 20% of the ordinary shares in the investee company for a continuous period of at least 24 months.

The announcement offers certainty for the tax treatment of gains derived by a company from the disposal of ordinary shares ('the safe harbour rule') to cover disposals up to 31 December 2027 (along with some tweaks to its scope). However, the Government's decision to extend the period to 2027 did not go so far as to extend the 13Z safe harbour rule to insurance companies despite the landmark decision in the taxpayer's favour in Singapore's Court of Appeal 2014 case of Comptroller of Income Tax v BBO. As such, insurers will continue to face uncertainty over the tax treatment of share disposals.

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Australia
Overview of recent developments

1. Top 1,000 Tax Performance Program

Background

The Australian Taxation Office ('ATO') commenced the 'Top 1,000 Tax Performance Program' to seek assurance that the largest 1,000 public and multinational companies in Australia (with an annual turnover above $250m) are reporting the right amount of income tax or identify areas of tax risk requiring further action.

The ATO engages taxpayers through a 'streamlined tax assurance review' which seeks to obtain assurance that:

- appropriate **tax risk and governance frameworks** exist and are applied in practice;
- none of the **specific tax risks** flagged to the market in taxpayer alerts are present;
- tax outcomes of **significant or new transactions** are appropriate; and
- any **misalignment between tax and accounting** results is explainable and appropriate and the right amount of tax on profit from Australia linked business is recognised in Australia.

Typically, a review will cover the last four income years and is designed for the ATO to assess whether the taxpayer has earned 'justified trust'.

'Justified trust' is a concept from the OECD which the ATO uses to build and maintain community confidence that taxpayers are paying the right amount of tax.

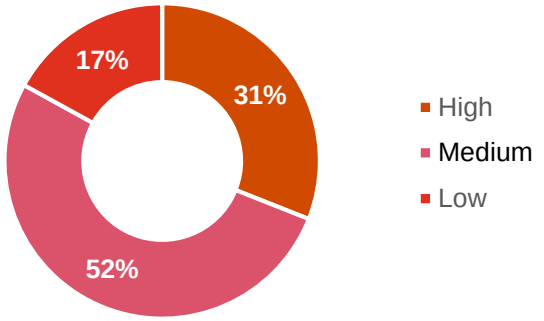
To achieve justified trust, the ATO seeks objective evidence that would lead a reasonable person to conclude a particular taxpayer paid the right amount of tax. This is a higher level of assurance than confirming certain risks do not arise.

Observations

In late July 2019, the ATO released its Findings Report which summarised the key findings from over 280 finalised reviews.

Approximately 83% of taxpayers reviewed had obtained an overall medium to high assurance level.

ATO Findings – Top 1,000
Overall assurance obtained



Taxpayers that obtained an overall low assurance rating should expect that the ATO will follow up with them to address the specific concerns identified during the review. While the ATO seeks to first resolve their concerns with the taxpayer, many of these issues will move directly to audit.

We understand that as at December 2019, approximately 750 streamlined tax assurance reviews had been completed. The remaining 250 reviews (approx.) are expected to be completed by December 2020.

The ATO will be releasing an updated Top 1,000 Findings Report in March 2020 (expected to cover the 750 reviews completed to date).

The ATO has generally targeted its reviews by industry or sectors. The financial services industry was targeted during 2018 and 2019. A significant number of insurance companies are currently in the process of being reviewed by the ATO and the review of insurance companies is likely to continue throughout 2020.

Key areas of risks identified by the ATO for the Top 1,000 taxpayers include:

- tax governance, including design, effectiveness and operation of the tax risk and governance framework;
- related party financing;
- thin capitalisation;
- transfer pricing;
- consolidation structuring; and
- research and development claims.

Australia
Overview of recent developments

Based on reviews to date, the ATO noted that the insurance sector largely reflected the broader statistics for the Top 1,000.

Other areas of specific focus for insurance companies include:

- prima facie tax reconciliations (including for life insurance companies with segregated ordinary risk and superannuation businesses);
- transfer pricing and reinsurance with foreign related parties; and
- calculation of tax on premiums paid to non-resident insurers and reinsurers.

We strongly encourage insurance companies to prepare early for the reviews as many questions can be anticipated and evidence-based responses prepared in advance. Additionally, taxpayers should review and update their tax governance and risk management framework to ensure it goes beyond tax technical risk. It should consider tax risks in the wider context of people, process, data and technology.

2. Treasury Consultation Paper – Taxation of insurance companies

Treasury published a consultation paper in November 2018, 'Taxation of insurance companies'. While that paper is now more than 12 months old, the industry is still actively considering the issues it raises.

The primary objective of the consultation paper was to consider the Australian income tax impacts of implementing AASB17 (Australia's equivalent accounting standard to IFRS 17) for Australian insurance companies.

The paper also sought comment on whether:

- the tax law for health insurers should be codified; and
- the tax law should specify how to calculate outstanding claims liabilities for general insurance companies.

As at the date of this article, Treasury has published industry submissions but are yet to provide a formal response to these submissions.

Some of the complexities in adopting AASB17 relate to whether the taxation of insurance underwriting business for life insurance companies could be simplified to align to both prudential and accounting standards, particularly in relation to the treatment of deferred acquisition costs (DAC).

We understand that Treasury is awaiting more certainty around how AASB17 will be implemented prior to providing guidance and undertaking tax law reform. We expect to hear more from Treasury during 2020 and will revert with a further article when we do hear more on this.

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Economic substance requirements (UAE, Bahrain and the Channel Islands)

In brief

The degree of economic substance required in order to establish tax residence and benefit from certain tax exemptions is a hot topic in many territories. Various international bodies, including the OECD and EU, are taking an active interest in the tax regimes of territories with low rates or potentially beneficial tax systems, by reference to these requirements.

In response to this increased scrutiny, we have seen a number of territories introduce new requirements on the substance required in their territory, including the UAE, Bahrain and the Channel Islands. We have summarised these new requirements below. As noted below, there are a number of similarities between these regimes as organisations move towards OECD standards, but meeting all of the specific local requirements in each territory is also very important.

United Arab Emirates ("UAE")

On 30 April 2019, the UAE Cabinet issued a resolution requiring certain companies to have demonstrable economic substance in the UAE, which was followed by a guidance document in September 2019.

Importantly, the Guidance does not establish a minimum standard for what would be considered 'adequate' or 'appropriate' substance, which is consistent with the guidance issued by other jurisdictions that have introduced economic substance regulations.

The following are considered as Relevant Activities under the Regulations: banking, insurance, fund management, lease-finance, headquarters, shipping, holding company, intellectual property (IP), and distribution and service centres.

To satisfy the economic substance requirements in relation to a Relevant Activity, a Licensee must:

- conduct the relevant 'core income generating activities' in the United Arab Emirates
- be 'directed and managed' in the United Arab Emirates, and
- with reference to the level of activities performed in the United Arab Emirates:
    - have an adequate number of qualified full-time employees in the United Arab Emirates
    - incur an adequate amount of operating expenditure in the United Arab Emirates, and
    - have adequate physical assets in the United Arab Emirates.

A Licensee that undertakes a 'Holding Company Business' is subject to a reduced level of substance. They are required to have an adequate number of qualified full-time employees and physical assets in the United Arab Emirates (there is no need to incur an adequate amount of operating expenditure in the United Arab Emirates). On the other hand, if a Licensee is considered to be a 'High Risk IP Business', it is presumed to fail economic substance requirements, unless it can demonstrate additional substance requirements.

In addition to exchanging information with foreign authorities, failure to comply would result in administrative penalties. The size of these would be a minimum of AED 10,000 but not exceeding AED 50,000 in the first year of failure, increased to an amount not less than AED 50,000 but not exceeding AED 300,000 in the subsequent consecutive year of failure, subject to a six-year limitation period. Additional penalties such as suspending, revoking or not renewing the UAE entity's trade licence could also apply.

The introduction of Economic Substance Regulations in the United Arab Emirates affirms the United Arab Emirates' commitment to addressing concerns around the shifting of profits derived from certain business activities to 'no or nominal tax jurisdictions' without corresponding local economic activities.

Bahrain

On 28 January 2020, the Bahrain Ministry of Industry Commerce and Tourism published FAQs in respect of the Bahrain Economic Substance Regulations, which were released on 23 December 2018, followed by a guidelines document. Although the guidelines and FAQs, here, provide additional clarity on certain key areas, there remain areas where further clarity and detail is required. We expect these areas will be addressed in further clarifications from the authorities.

The Regulations require entities falling within their scope (which excludes entities with no overseas activities) to satisfy certain economic substance requirements and to report on these matters within three months from their financial year end. The first reporting will thus have to take place on 31 March 2020 for entities whose financial year 2019 closed on 31 December.

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Economic substance requirements (UAE, Bahrain and the Channel Islands)

These Regulations apply to entities (corporations, branches and partnerships) formed under MOICT legislations conducting one or more of the following activities: distributions and service centres, headquarters, holding, leasing, shipping, intellectual property, banks, financing companies, insurance, investment business firms and fund administrators.

In order to meet the economic substance requirements, the entities will have to evidence that:

- core income generating activities ('CIGA') are conducted in Bahrain. This includes in particular: a) an adequate amount of operating expenses, b) qualified employees and c) physical offices.
- the entity is directed and managed from Bahrain (this includes in particular Board of Director meetings taking place in Bahrain at an adequate frequency with physical presence of a quorum of directors and actual strategic decisions taken during these, as well as keeping records in Bahrain).

The takeaway

The Guidelines have provided clarification on multiple aspects of the Bahrain economic substance regulations and their practical application.

The FAQs provide clarification and guidance on the application of the Regulations and the Guidelines, including:

1. whether substance is evaluated on an entity by entity level or on a group basis; and
2. whether employees and directors need to be resident in Bahrain.

There remain areas where further clarity and detail will be required. We expect these will be addressed in further communications from the Bahrain MOICT or the relevant regulatory authorities (e.g. Central Bank of Bahrain).

We strongly recommend all entities resident in Bahrain to assess if their activities fall within the scope of the Regulations, and how to ensure they can meet the Economic Substance test in respect of each Relevant Activity. This is both a qualitative and quantitative assessment that would involve consideration of operational, financial, tax, transfer pricing, legal and governance matters.

Channel Islands

At the end of 2018 the respective parliaments of the Channel Islands (Jersey and Guernsey) approved the introduction of economic substance requirements. These requirements ensure that a jurisdiction does not facilitate offshore arrangements or structures aimed at generating profits, which are not indicative of the economic activity within the jurisdiction. The new legislation is effective for accounting periods starting on or after 1 January 2019 and applies to all companies who have tax residency in the Channel Islands. The Channel Islands released initial joint guidance in April 2019, revised in November 2019.

The revised joint guidance has been expanded to include new sections on insurance, intellectual property companies, high-risk intellectual property companies, shipping and the treatment of cell companies, which were omitted from the April 2019 version. Where your business may undertake one of the relevant activities, or operates via a cell company, we recommend these new sections are considered.

Various other sections of the guidance have been amended including the overview of the requirements, (pure equity) holding companies, fund management, distribution and service centres, and direction and management.

The key changes are as follows:

- Collective Investment Vehicles ('CIV') are out of scope if they are subject to regulation in the relevant Island. However, this exclusion does not extend to subsidiaries of a regulated CIV.
- The information to be provided by companies carrying on relevant activities as part of the income filing process has been expanded to include the net book value of tangible assets.
- Protected Cell Companies are regarded as a single legal entity and will be required to satisfy the economic substance requirements at the whole entity level. Each cell, if conducting a relevant activity, will need to demonstrate that it conducts CIGA on the Island. In contrast, Incorporated Cell Companies will be assessed under the rules on a cell by cell basis, with the legal entity itself only required to satisfy the economic substance requirements in relation to any activities it conducts itself.
- Companies will be assessed under the rules on a cell by cell basis, with the legal entity itself only required to satisfy the economic substance requirements in relation to any activities it conducts itself.

Economic substance requirements (UAE, Bahrain and the Channel Islands)

- While CIGA which generate income for the company must be undertaken in the Island, isolated decisions in relation to CIGA may be taken off-Island, provided that decisions take taken on-Island outweigh those taken off-Island, both in quantity and quality.
- The definition of a (pure equity) holding company is narrowed from a company with a 'primary' function of acquiring and holding equities, to a company with a 'sole' function of acquiring and holding equities.
- In respect of the directed and managed requirement, the guidance includes numerous amendments, including the confirmation that only those board meetings which are being counted towards the test to demonstrate substance need to be held on-Island with a quorum physically present.

Next steps for Insurers

If business is conducted in the Channel Islands, a substance review should be implemented to establish whether the substance requirements are applicable. Once complete, the company needs to ensure that the analysis is in line with their group transfer pricing policy

Businesses need to revisit any previous analysis based on the initial guidelines in order to ensure that the significant amendments introduced in the revised guidelines are considered. The Island specific guidance should be referred to in order to find out more information on the IT filing process in each jurisdiction.

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