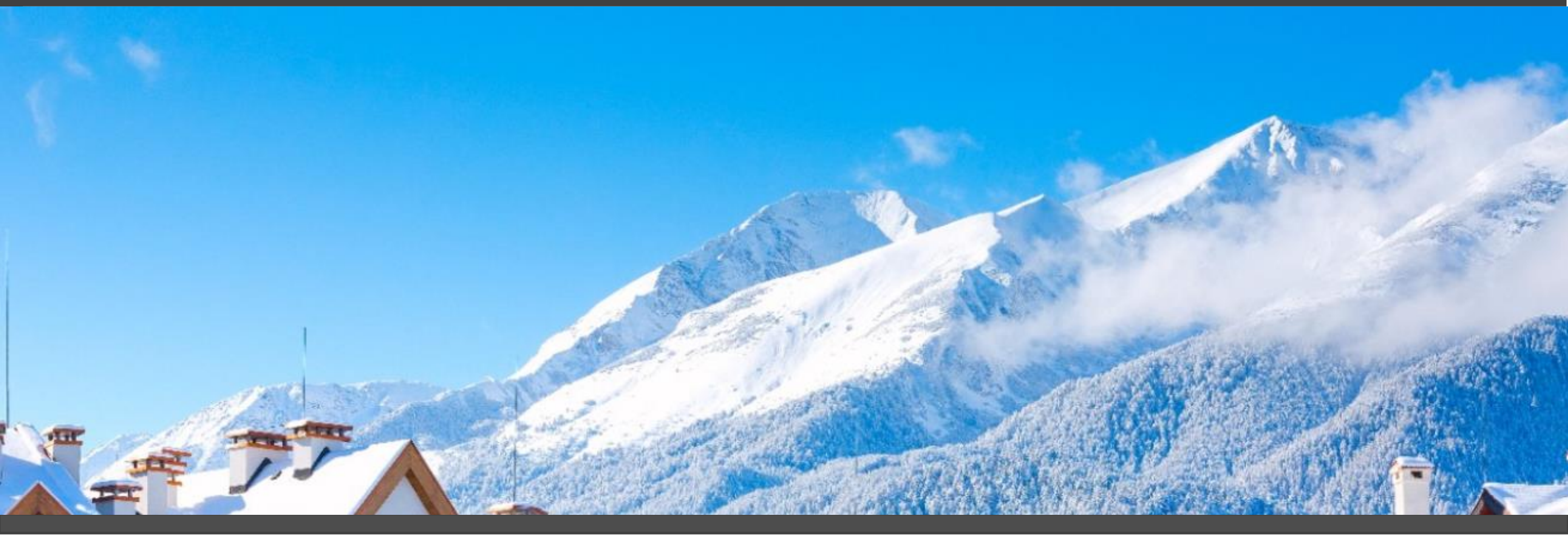
EMEA Tax & Legal Insurance Newsflash

4th Edition – March 2023 (Q1)



Tax function & new world of tax

ATAD 3

EIOPA Q&A

Recent budgetary measures

BEPS 2.0 Pillar Two – Hot Topics

Tax exemption for captives

IPT Update France

Solvency II

Tax on securities accounts

Data Point Collector

Croatian fire brigade charge

Welcome

Welcome to our new edition of the quarterly published EMEA Tax & Legal Insurance Newsflash (Q1/2023). We are pleased to share with you the latest tax and legal topics and updates from the EMEA region.

In this edition you will find the following articles:

- European Union: ATAD 3: European Parliament approves Amendments
- European Union: EIOPA-Q&A: Netting of deferred tax assets and liabilities under Solvency II
- Austria: Higher Administrative Court first time decides on the income tax qualification of a foreign pension scheme
- Belgium: Recent budgetary measures - Program Law of 26 December 2022
- Belgium: Tax on securities accounts – Constitutional Court decision of 27 October 2022
- Croatia: HANFA published note regarding Fire brigade charge
- France: Recent IPT updates and tax exemption for captives
- Switzerland: How does a tax function of re/insurance group get ready for the new world of tax?
- Switzerland: BEPS 2.0 – Pillar Two: Hot Topics and Challenges in the Insurance Sector – Second Part

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. Also, feedback and wishes for our next edition are highly welcome and much appreciated!

We would be pleased if you subscribe to our Newsflash to be always up to date on tax issues in the European insurance sector. You can register using this link. You will find older versions of the newsflash also on this page.

Enjoy reading and best regards,

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Contents

European Union

ATAD 3: European Parliament approves Amendments

On 17 January 2023 the European Parliament approved the – amended – draft directive for preventing the misuse of shell entities for tax purposes (ATAD 3). Before ATAD 3 can be adopted into domestic legislation of EU Member States the Council of the EU must accept the new version of the directive. However, the Council is not obliged to accept the amended version of ATAD 3, thus the changes made by the EU Parliament are not final and should be viewed only as recommendations. Still a couple of relevant questions for the insurance industry (e.g., possible expansion of the exemption for regulated financial undertakings) could be discussed at Council. The latest amendments of the European Parliament cover changes in the scope (adjusting thresholds/carve-outs), reporting requirements (minimum substance indicators/documentary evidence from in-scope entities) and enforcement and consequences of non-compliance with ATAD 3.

The planned effective date of 1 January 2024 remains quite ambitious, given the fact that Member States will need to transpose the Directive into final law by 30 June 2023 despite other ongoing legislative dossiers like the domestic implementation of Pillar 2. And especially for insurance companies with investment funds and with international activities will face additional implementation and/or ongoing compliance/documentation costs.

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European Union

EIOPA-Q&A: Netting of deferred tax assets and liabilities under Solvency II

EIOPA recently published a new Q&A regarding netting of deferred tax assets and liabilities for determining the amounts to be presented in the solvency balance sheet. According to the Q&A netting must be performed according to Guideline 9 on the valuation of assets and liabilities other than technical provisions, in line with IAS 12.71. Reporting netted deferred taxes implies that either R0040 or R0780 should be 0 except for the case where some deferred tax assets and deferred tax liabilities cannot be offset. The "amount equal to the value of net deferred tax assets" (S.23.01, R0160, C0050) therefore corresponds to the value of deferred tax assets in the solvency balance sheet (S.02.01, R0040, C0010). This should be the amount requiring a demonstration that it is probable that future taxable profits will be available against which the deferred tax assets can be utilized and thus reflects an own funds item of Tier 3 quality. For details, please see Q&A 2354.

According to reports local supervisory authorities are currently considering the position of EIOPA. Implementation of the Q&A is expected to be mandatory at latest from 2023.

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Austria

Higher Administrative Court first time decides on the income tax qualification of a foreign pension scheme

In a recently published decision (Ro 2021/15/0013), the Higher Administrative Court ("*VwGH*") for the first time dealt with the insurance character of a foreign insurance product for income tax purposes. In summary, the case at hand referred to a unit-linked annuity insurance product of a Liechtenstein insurance company with a single premium payment. The plaintiff, and her husband took out a life insurance at the ages of 61 and 65 in return for the payment of a single premium with annuity factors guaranteed at the time of contracting. Pension payments have been agreed starting 30 years after inception date (i.e., first payments would have been received by plaintiff and her husband starting in the age of 91 and 95). Above the ordinary right to opt for / shift to different risk classes in respect of the capital assets, the policyholders had no further option to influence the asset management. In case of death during the payment period, the beneficiaries would have received the market value dedicated to the insurance coverage fund ("*Deckungsstock*"). Further, the policyholders had the right to terminate / (partially) withdraw the contract at any time one year after signing the policy.

In a nutshell, the question at hand was whether the insurance company was bearing any risk (which would be adherent for the classification as an insurance product from a tax perspective). The VwGH in its decision denied any risk during the payment period as the policyholders (in case of termination or (partially) withdrawal) and the beneficiaries (in case of the policyholders' deaths) would have received the market value dedicated to the insurance coverage fund. Hence, the insurance company would not bare any risks in that respect.

Regarding the risk baring after the payment period, the VwGH holds that the older the policyholder and the longer the payment (deferment) period, the lower is the risk for the insurance company as future payments above the deposited premium payments (including the capital investment result) would be more and more unlikely. In the case at hand, and the annuity factors guaranteed, the insurance company would have had a loss out of the insurance product only if the policyholder reaches the age of 106, which was evidently considered to be very unlikely (according to the officially published Austrian life tables, the risk was calculated with 1.1%). Therefore, the VwGH concluded that also after the payment (deferment) period the insurance company did not underwrite sufficient risk to classify as an insurance product for tax purposes. Therefore, the insurance product was assessed as an investment product with capital gains tax (instead of insurance premium tax).

Also, the Austrian tax authorities hold that an insurance product can only be classified as a life insurance product, for tax purposes, if the insurance company bears sufficient risk, which would be the case if at least 105% of the capital in the insurance coverage fund would be paid out in case of death, i.e., if a risk capital of at least 5% of the insurance coverage fund is included. The second criteria implied by the Austrian tax authorities to distinguish between an insurance, or an investment product would be, whether the policyholder would have the economic ownership of the invested capital (equal to an investor). If the policyholder can constantly decide on the investment decisions, he is considered to be the economic owner. This would mean that the income would be attributed directly to the policyholder and taxed with capital gains tax (instead of insurance premium tax). However, in the case at hand, the policyholders had no option to influence the asset management above what is usually possible (e.g., they were not able to choose the depository bank or asset managers or influence the daily investment decisions). Therefore, the VwGH did not address this aspect separately.

Even if the present case was more or less clear to be seen as an investment product rather than an insurance policy from a tax perspective, the VwGH's remarks on that case (together with the Guidance published by the Austrian tax authorities) can serve as an indication for future cases. It shows that it is from utmost importance for the insurance companies to evaluate every insurance product before launching them to be clear on the tax consequences for the policy holders. If you need any assistance in that respect, our tax experts are glad to support you.

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Belgium

Recent budgetary measures - Program Law of 26 December 2022

The Program Law of 26 December 2022 implemented several budgetary measures affecting the Belgium corporate tax regime. Summarized hereinafter are several changes that could impact insurance companies and branches operating in Belgium.

Extension of the basket rule

The minimum tax base rule (otherwise known as the "basket rule") is reinforced, until the law transposing the Pillar II Directive in Belgium has entered into force.

In the previous basket system, certain tax attributes (such as the carried forward tax losses or the carried forward dividend received deduction) could only be used against a taxable result of 1M EUR plus 70% of the excess.

The Program Law decreases the 70% limit to 40%. As a result, 60% of the taxable profit above 1M EUR will not be offsetable against e.g. carried forward tax losses or dividend-received deduction. The portion of tax attributes that cannot be used because of this limitation may be carried forward over subsequent tax years.

This measure will be applicable from assessment year 2024 which relates to a taxable period starting on 1 January 2023 at the earliest. An anti-abuse rule is provided to counter tax motivated changes of the financial year closing date.

Abolishment of the notional interest deduction

The notional interest deduction (NID) provided for the deduction of a fictitious interest calculated by reference to the increase over a five-year period of the equity of companies (or branches) subject to Belgian corporate income tax. The percentage of the notional interest was recalculated yearly based on an average rate applicable to linear bonds issued by Belgium.

In recent years, the rate applicable for insurance companies was nihil due to the low prevailing interest rates.

The Program Law has repealed the NID for all Belgian companies and branches. This change is applicable from taxable periods ending on or after 31 December 2023.

Partial disallowance of the subscription tax

Belgian insurance carriers are liable to pay a 0,0925% yearly tax on the technical provisions pertaining to life insurance contracts known as “non fiscal policies” (in broad terms, premiums paid under those policies do not give rise to any tax breakage but pay-outs at maturity are exempt from income tax).

This tax was previously fully deductible for corporate income tax purposes.

The new regime disallows 80% of the subscription tax paid by insurance undertakings. In addition, those undertakings will not be allowed to offset any dividend-received deduction (application of the parent-subsidiary regime) with respect to non-EEA dividends against the non-deductible part of the subscription tax.

This measure will apply to taxes due from 1 January 2023.

Note that a similar tax applies to credit institutions and certain collective investment schemes and that it will be equally disallowed in their hands.

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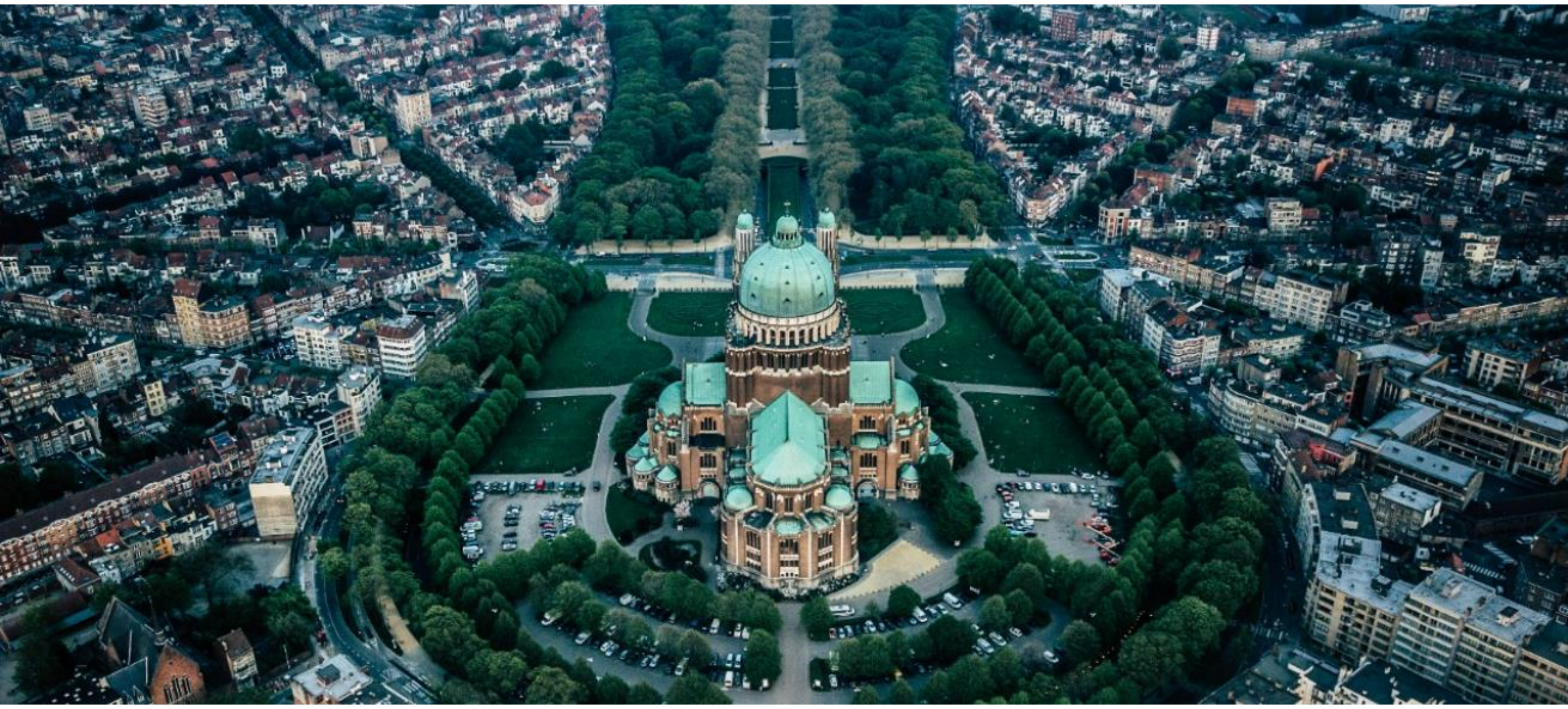

Belgium

Tax on securities accounts – Constitutional Court decision of 27 October 2022

The Law of 17 February 2021 introduced a 0.15% annual tax on securities accounts (with an average value exceeding 1M EUR). Securities accounts held by certain financial institutions may benefit from an exemption. However, the tax still applies to securities accounts held by Belgian insurance companies (or, in some cases, by foreign insurance companies, through a Belgian custodian) within the framework of unit-linked insurance contracts.

Several actors (including Assuralia, the Belgian professional insurance association) challenged the tax on securities accounts before the Constitutional Court.

In its decision of 27 October 2022, the Court maintained the general effect of the tax and annulled only two specific provisions relating to:

1. the retroactive effect of the general anti-abuse rule (for operations that took place between 30 October 2020 and 25 February 2021); and

2. the so-called "specific anti-abuse rule", which amongst others presumed (irrefutably) that any conversion of financial instruments held in a securities account (in principle, in scope of the tax) into registered financial instruments (in principle, outside the scope of the tax) constituted tax abuse.

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Croatia

HANFA published note regarding Fire brigade charge

The Croatian Financial Services Supervisory Agency (Hrvtska agencija za nadzor financijskih usluga - HANFA) published on its website Information concerning general good requirements of Croatian law (mandatory provisions of Croatian law) which, among other things, contain provisions on the obligations of the insurance undertakings which provide compulsory motor third part liability insurance as well as those that collect fire insurance premiums to pay certain fees.

Health Insurance

According to Article 72(1)(11) of the Act on Compulsory Health Insurance (Official Gazette No. 80/13, 137113; hereinafter: ACHI), incomes of the compulsory health insurance are, among others, incomes from compulsory Motor Third Party Liability insurance.

Furthermore, according to Article 72 (3) of the ACHI, those incomes shall be paid by insurance undertakings in the amount of 4% of the settled risk premium of compulsory Motor Third Party Liability insurance. This amount represents an advance compensation for the damage to the Croatian Institute for Health Insurance in the cases referred to in Article 140 of the ACHI caused by owners or users of the insured motor vehicle.

Furthermore, according to Article 72 (4) of the ACHI, insurance undertakings are obliged to reimburse the income referred to in Article 72(1)(11) of the ACHI in accordance with Article 72 (3) of the ACHI by the 10th day of the month for the previous month on the total amount of settled risk premium of compulsory Motor Third Party Liability insurance into the account of the Croatian Institute for Health Insurance.

Furthermore, according to Article 77 (1) of the IA, the ACHI applies to all insurance undertakings from the EEA which in accordance with the provisions of the IA and ACITS provide services relating to compulsory Motor Third Party Liability Insurance in the territory of the Republic of Croatia under freedom of services and freedom of establishment.

In addition, insurance undertakings from another Member State which provide compulsory Motor Third Party Liability insurance in the territory of the Republic of Croatia on a freedom to provide services or freedom of establishment basis are obliged to pay 4% of the settled risk premium of compulsory Motor Third Party Liability insurance to the Croatian Institute for Health Insurance as described above.

Fees paid upon realization of fire insurance premiums

Pursuant to Article 112 of the Fire Protection Act (Official Gazette No. 12512019), insurance undertakings set aside funds totalling 5% of the fire insurance premium; 30% of these funds are paid into the account of the Croatian Firefighting Association, 30 % into the special account of the firefighting association of the county, or the City of Zagreb, in the area where the insured property is located, and 40% into the account of the firefighting association of the municipality or city in the area where the insured property is located.

These funds are managed separately and are used for carrying out firefighting activities and activities of public firefighting units, voluntary firefighting societies, firefighting associations of municipalities, cities, counties, and the City of Zagreb, according to the standards established by the Fire Headquarters of the Croatian Firefighting Association.

Legal entities that establish their own insurance funds for fire insurance of their property pay fees from these funds in the amount and in the manner determined in Article 112 (1) of the Fire Protection Act. These insurance undertakings or insurance funds are obliged to submit to the Croatian Firefighting Association a report for the previous year containing the following information, no later than by the end of February of the current year:

- the insurance undertaking's total income from fire insurance premiums
- the amount of the mandatory payment in accordance with the Fire Protection Act
- the total amount paid to the Croatian Firefighting Association
- the total amount paid to the firefighting association of the county and the firefighting association of the City of Zagreb
- the total amount paid to the firefighting associations of the local self-government unit
- difference for payment or return.

Fire insurance premium paid by legal entities that have their own professional firefighting unit or their own voluntary firefighting society laid down by the Fire Protection Act is reduced by insurance undertakings by 30% of the amount determined by Article 112(1) of the Fire Protection Act only for the property their units insure in accordance with the fire protection plan.

Insurance undertakings and insurance funds are obliged to fulfil the obligation to pay the above-mentioned funds at least quarterly.

Source: https://www.bafin.de/dok/18667198

France

Recent IPT updates and tax exemption for captives

1. FNGRA contribution increase

The Finance Act for 2023 provided for an increase in the rate of the additional contribution to premiums or contributions relating to insurance agreements applicable to agricultural activities:

The rate of the additional contribution to the FNGRA was 5.5% (article L.361-2 of the Rural and Maritime Fisheries Code). This rate is increased to 11% from January 1, 2023.

This increase reflects the implementation of the reform of agricultural risk management (which, from 2023, will strengthen the means of the FNGRA thanks, on the one hand, to an allocation from the State (up to €295.5 million in 2025) and on the other hand, to an additional amount of resources by doubling the allocated tax ceiling from €60 million to €120 million.

2. E-reporting and e-payment

The Finance Act for 2023 has postponed by 2 years the deadline for the implementation of e-reporting and e-payment of the French IPT and Withholding on death benefits.

3. Tax exemption for captive

From January 1, 2023, certain captive reinsurance companies, held by a company other than a financial company and whose purpose is “the provision of reinsurance cover relating exclusively to the risks of companies other than financial companies" will be able to book a tax-free reserve known as provision for equalization concerning risks listed by reference to article A.344-2 of the insurance French code

The limit within which the annual allocations to this provision may be deducted from the profits and that of the overall amount of the provision will be fixed by decree.

The provision will be allocated, in the order of seniority of the annual allocations, to the overall compensation of the negative balance of the technical income statement for the financial year for all the corresponding risks. The annual allocations which, within fifteen years, have not been able to be used in accordance with this object will be reported to the taxable profit of the sixteenth year following that of their accounting.

Finally, the conditions for recognizing and declaring these provisions will be set by decree.

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Switzerland

How does a tax function of re/insurance group get ready for the new world of tax?

Tax remains a vital part of the contribution businesses make to the societies in which they operate.However, as technological advancements and evolving social norms change the world around us, the way in which businesses manage, control, and communicate their contribution is dramatically changing, and the tax function can play a vital role in that change. Is the tax function of today ready for the new world of tax?

Increasing data requirements and a renewed focus on stakeholder capitalism demanding greater transparency, all against a backdrop of increasingly complex and multi-faceted re/insurance and other regulations as well as shrinking budgets. The pressure for tax functions in the re/insurance industry to do more with less has never been greater.

Nowadays, it is not only about the disclosure of tax information within statutory deadlines but providing tax data at pace with zero margin for error, and sharing it with a broader audience, considering their unique perspectives on (and likely reactions to) any disclosures made, including intragroup reinsurance arrangements. This means that the strategic importance of the tax function has never been greater. This demands new fit-for-purpose operating models to deliver on tax compliance and manage tax risks, new tools to manage the day-to-day operations as well as new skills to deliver the right message in the right way to the right place.

It is essential to seize the opportunities now and prepare today's re/insurance tax function to be Tax Function of the Future.

Often, technology alone is seen as the panacea to these challenges. But digital technology is best deployed in operating a “good” process faster, better and cheaper. If the process itself isn’t fit for purpose, technology alone will not solve the issue. It is therefore critical to get key design features right first – we organise our thinking on this topic around what we call the “tax governance framework”.

Our model for a tax governance framework can be reflected by the four primary dimensions: tax strategy and leadership, tax operations, tax risk and control. and tax transparency. All of the dimensions interact and depend on each other by the common factor of technology. In this respect, technology can be used to:

- motivate and further develop tax strategy and leadership aligning it with the business strategy,
- drive and boost – as an essential component – operational efficiency for tax operations,
- track and monitor tax affairs within tax risk and control dimension, and finally,
- extract and report tax data for the purposes of internal as well as external tax transparency.

If you want to enhance the role of tax and build a solid tax governance framework, you need technology to do this. If the mentioned dimensions are the necessary components, technology is the oil that helps all the components work together. Technology also constitutes the link between the dimensions. In this respect, advancement of one area influences and enhances the operation of the other dimensions.

Many pages have been used to explain the benefits of tax technology solutions to deliver the business-as-usual activities of the tax function in the re/insurance industry, so we won’t go into that here. Less has been spent on how technology can be used to support the transformation effort. We use the rest of this piece to outline that here.

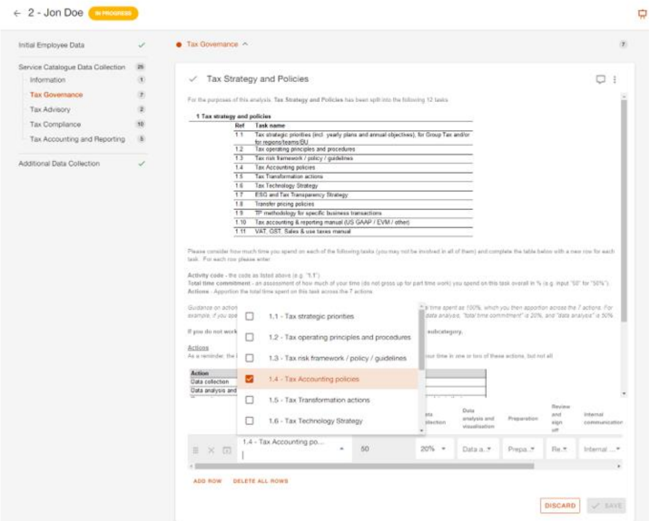
We use technology to help us deliver our tax transformation services to our clients more effectively. We have developed and continue to develop digital assets that can be used with organisations to achieve lasting and meaningful change.

Looking to understand the current state of the tax function? Trying to improve the collection of unstructured data? Struggling with introducing human judgement to your structured datasets? Just fed up of using Excel?!

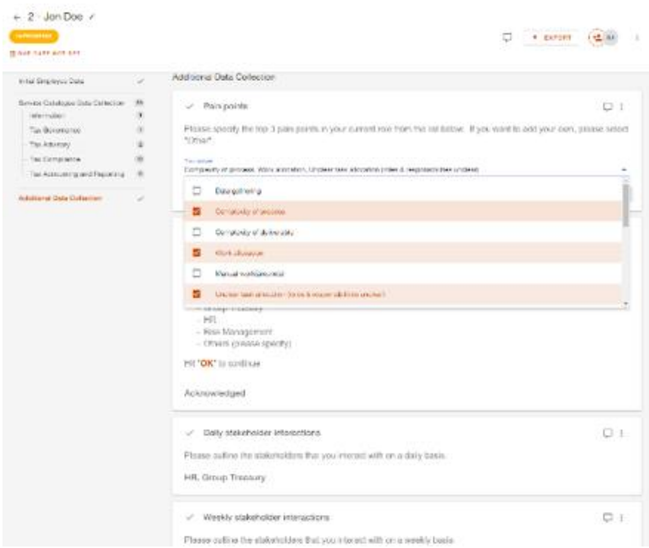
To answer those challenges (and many more) we deploy digital assets such Data Point Collector - a PwC developed tool designed to digitise PwC services and focused on collecting unstructured data in a controlled and auditable way. We use Data Point Collector in each of the tax governance framework dimensions to help our clients explore and capitalise on the opportunities that come from a deeper understanding of tax within the business and to address well-known compliance and risk challenges. Data Point Collector supported services have been deployed effectively at multiple organisations in the re/insurance sector, with positive feedback from clients on the speed and accessibility of services deployed.

Some of the marquee services we use DPC for include:

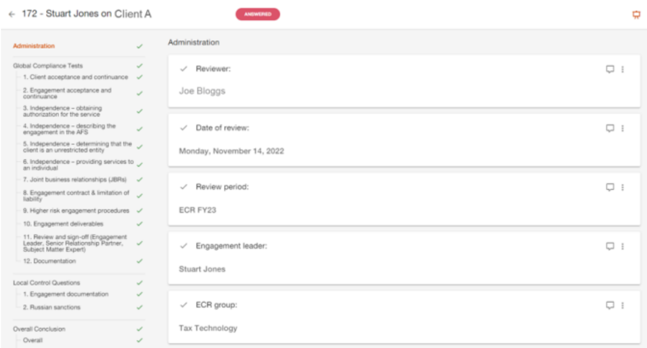
Compiling a tax service catalogue: Managing the collection of information on the activities performed by the employees of tax function, helping to determine the current state of tax function so that management can make informed decisions about how they want to operate, and what investments they want to make going forward.



Regulatory compliance data gathering: Codifying regulatory rulesets to enable fully auditable legal entity assessments. We have used this to enable the classification of legal entities against complex OECD Pillar II rules around identifying constituent entities relevant to the GLoBE calculation.



Collecting unstructured "non-system" data: Developing proprietary data collection templates quickly and easily to collect data that is contained "in people's heads", for later combination with ERP or tax engine data. We can use this approach to collect information to calculation Tax Transparency relevant data, Insurance Premium Tax (IPT) related data, or the non-system data points relevant for the BEPS 2.0 calculation that often aren't yet available in tax systems.



In each case, data can be collected, structured, and delivered via the client engagement team to organisations in a consistent, transparent and efficient way, enabling us to bring more value to our clients as part of tax transformation projects. But we aren't stopping there. We are now focusing on integrating our digital assets with other software products - imagine receiving a message in Microsoft Teams, and your response being fed directly into a Data Point Collector template, or automatically pulling transaction data from your tax engine, enriching that data with human input via a user-friendly SaaS application, and feeding the enhanced dataset into the ERP system, all in a fully auditable way. We are only just scratching the surface of what we can do by integrating digital asset "microservices" to deliver our services in a new way.

We are helping our re/insurance clients build the tax function of the future every day. With the use of technology, we can further enhance the value we deliver to organisations, getting business ready for the new world of tax. Come and speak to us if you would like to learn more.

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Switzerland

BEPS 2.0 – Pillar Two: Hot Topics and Challenges in the Insurance Sector – Second Part

Introduction and Legislative Update

In 2021 and 2022, the OECD released the Pillar II Model Rules ("GloBE Rules") and a related Commentary which intend to ensure that large multinational groups pay a minimum level of tax of 15% in each jurisdiction where they operate.

On 20 December 2022 the OECD then published the first part of the so-called implementation framework, which consisted of the guidance on Safe Harbours and Penalty Relief, a public consultation document on the GloBE Information Return, and a public consultation document on Tax Certainty for the GloBE Rules. And lastly, on 2 February 2023, the OECD released a first bunch of Agreed Administrative Guidance for the Pillar Two GloBE Rules ("Administrative Guidance") which should ensure coordinated outcomes and greater certainty for MNE Groups as they move to apply the global minimum corporate tax rules from the beginning of 2024. The OECD Inclusive Framework will continue to release further guidance on an ongoing basis throughout 2023 (i.e., in smaller packages) to ensure that the GloBE Rules continue to be implemented and applied in a coordinated manner.

On 15 December 2022 the EU states reached a final agreement on the directive implementing the international minimum tax for large companies. According to this directive, the new rules on the global minimum tax should enter into force in the EU on 31 December 2023 and are applicable for financial years starting after 31 December 2023. The rules of the directive will now have to be transposed into EU Member States' national law by the end of 2023. It is now expected that many countries outside the EU will follow relatively soon by either adopting changes to their legal systems or by starting public consultation processes to do so. Lastly, Switzerland, Japan and South Korea advanced with their legislative processes in the recent weeks to implement the Pillar Two rules effective 2024 and also Singapore announced its plans to implement the rules as of 2025.

In our last edition, we looked at deferred taxes and (insurance) investment entities as two key topics for insurance groups. Given the recent publication of the Administrative Guidance, the focus of this second article is on the Application of GloBE Rules to insurance companies as included in the Administrative Guidance.

Administrative Guidance Update

Taxable distribution method election

IIE are often set-up in locations different from where the investing insurance carrier is domiciled and are regularly subject to little or no tax according to domestic tax treatment since the income is usually taxed at the owner level. The tax transparency election intends to bring the income to the jurisdiction in which it is currently taxed after considering the related expenses. In cases where the tax transparency election is not available because the owner of the IIE is not subject to tax in its jurisdiction under a mark-to-market or similar tax regime the taxable distribution method election may achieve a similar result.

The Administrative Guidance extends the taxable distribution method election explicitly to IIE and the rule shall apply in the same way it applies to investment entities, i.e. the IIE makes distributions or deemed distributions of its income within a four-year period that are taxable at the IIE owner's level at or above the minimum rate of 15 %. The Administrative Guidance further clarifies that taxes arising on distributions and taxes incurred by the IIE regarding distributed income are included in determining the GloBE ETR of the owner. However, in case not all income from the preceding three years is distributed a top-up tax on any undistributed income would be levied at the IIE level.

Given the complex nature of insurance investment structures and the related accounting requirements, there may still be areas where the tax transparency election and the taxable distribution method election are not available and the practical application for some companies does not align with the intended treatment set out in the Administrative Guidance. The rules as drafted and interpreted may still lead to top-up tax and double taxation in certain situations. The OECD recognises the complexity of the taxable distribution method election and will consider the treatment of investment entities and insurance investment entities and consider simplifications and further clarifications of the rules.

Liabilities related to Excluded Dividends and Excluded Equity Gain or Loss from securities held on behalf of policyholders

Insurance companies often hold investments in equities on behalf of the policyholders (e.g. unit linked contracts). The insurance company is obliged to pay all earnings from the investment to the policyholders less an investment management fee. According to the new rule in the Administrative Guidance the movement in insurance reserves related to excluded dividends or excluded equity gains (net of investment management fee) is not allowed as an expense in the GloBE Income or Loss computation to achieve symmetry for GloBE purposes.

Simplifications for Short-term Portfolio Shareholdings

Where an insurance company receives dividend income from Short-term Portfolio Shareholdings[1], it will be possible to make an election to include dividends from all Portfolio Shareholdings (i.e. short-term and long-term) in the GloBE Income calculations.

With the election it is not necessary to identify the holding period at the date the dividend income is received which is something that was indicated to

[1] Less than 10% participation and less than 12 months holding period at the time of the dividend payment

the OECD to be very burdensome in practice by insurance companies and other stakeholders. However, applying this simplification/election will basically give rise to additional GloBE income and could therefore increase a potential top-up tax.

When applying the election, the insurance company – to achieve symmetry - would also not have to adjust the movements in insurance reserves that are related to securities held on behalf of policyholders in the computation of GloBE Income or Loss as described above.

Further Clarifications

The Administrative Guidance includes further clarifications and updates in relation to insurance companies, such as:

- IIE are being explicitly excluded from the definition of Intermediate Parent Entity and Partially Owned Parent Entities.
- The Additional Tier One Capital rules applicable to banks are being extended to insurers with Restricted Tier One Capital.
- The Tax Transparency Election is explicitly being extended to IIE held by mutual insurance companies.

Substance Based Carve-Out

The substance-based carve-out is a percentage of payroll costs and tangible assets for substantive activities within a jurisdiction. This percentage reduces the GloBE Income of the jurisdiction before multiplying with the top-up tax percentage. The substance-based carve-out only affects those entities with ETR's below the minimum rate of 15 %.

Example

The following example compares the impact on the ETR after top-up tax of three different GloBE ETR with equal substance. In scenario one the GloBE ETR is 14 % and it leads to a top-up tax of 0.6 and to an ETR after top-up tax of 14.6 %. With the GloBE ETR of 12 % in scenario two the top-up tax is 1.7 and the ETR after top-up tax is 13.7 %. Scenario three shows a GloBE ETR of 10 %, a top-up tax of 2.8 and an ETR after top-up of 12.8 %. This example illustrates that the substance based carved out can result in a ETR after top-up tax of below 15% dependent on the substance of the constituent entity in the jurisdiction, and as lower the GloBE ETR is as more beneficial it is.

The substance based carve out might lead to entities not paying a top up tax even if the local tax rate is below the minimum rate. The impact of the substance based carve out could be higher in industries with large tangible assets and relatively high payroll expenses. Financial services entities may have minor investments in tangible assets, but this may be compensated by higher payroll expenses.

#	Illustrative Szenarien	A	B	C = B / A	D = 15% - C	E	F	G = A - 9.8% x E + 7.8% x F	H = D x G	I = (B + H) / A
		GloBE Income	Covered Tax	GloBE ETR	Top up %	Payroll	Tangible assets	Excess profit*	Top up tax	ETR after top up
1	Swiss GloBE ETR at 14%	100	14	14%	1%	250	250	56	0.6	14.6%
2	Swiss GloBE ETR at 12% with equal Substance	100	12	12%	3%	250	250	56	1.7	13.7%
3	Swiss GloBE ETR at 10% with equal Substance	100	10	10%	5%	250	250	56	2.8	12.8%

* Based on 2024 Carve-Out %Rate. Such Rates get linealrly reduced to 5 % until 2033.

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