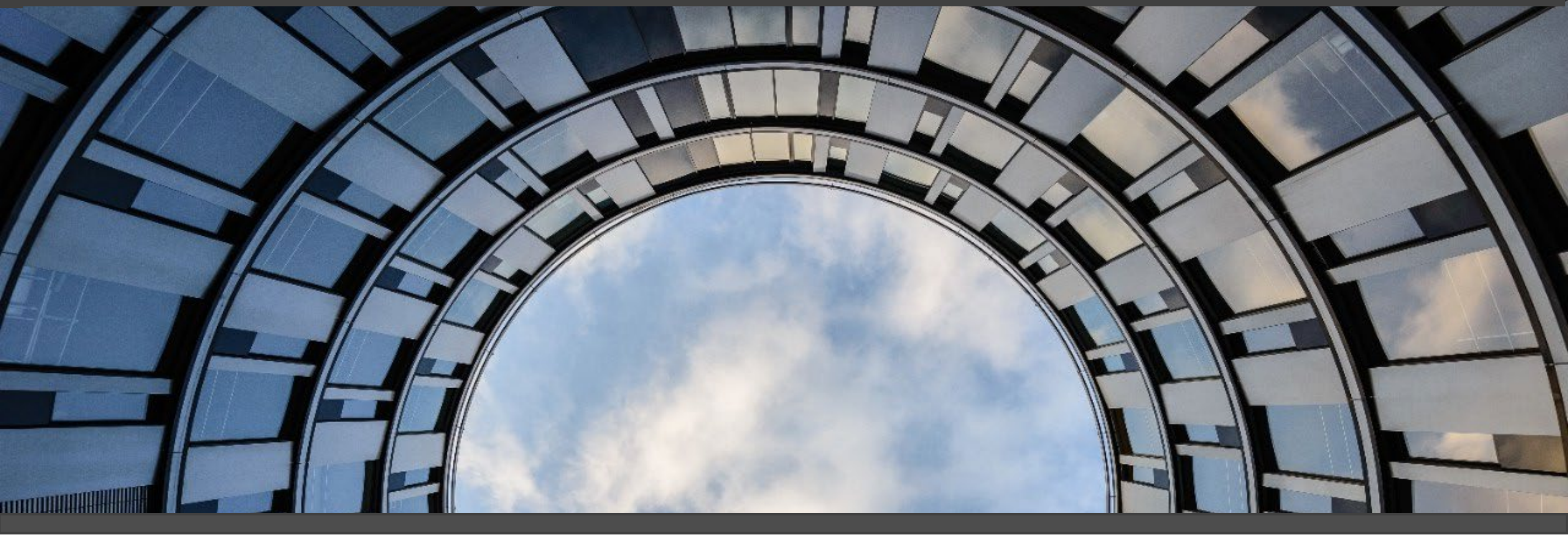
# EMEA Tax & Legal Insurance Newsflash

1st Edition – April 2022 (Q2)



**Minimum taxation rule**

**Pillar II**

**Cargo Insurance**

**Authorised OECD Approach**

**Interest on tax arrears/refunds**

**ESG**

**IFRS 17**

**Run-off portfolios**

# Welcome

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

In our first edition you will find the following articles:

- **Pillar 2: Model solution from Belgium**
- **First court ruling in Germany: Branch capital allocation under Authorised OECD Approach**
- **IPT-Circular in Germany for Cargo Insurance**
- **Amendment of rules on the interest on tax arrears/refunds in Germany**
- **New rules in Italy on the disposal of run-off portfolios**
- **Update from the Netherlands regarding IFRS 17 & Tax**
- **Minimum taxation rule of 15 % in Spain**
- **Update from Switzerland: ESG in the Insurance Tax Strategic Priorities**

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!

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# Belgium

## Pillar 2: Market Taxation Analyser

On 22 December 2021 the OECD released the long-awaited Pillar 2 Model Rules and only 2 days later the European Commission published an EU draft implementation directive. These rules should facilitate the implementation of a minimum effective taxation of 15% on a per country level for multinational groups with consolidated revenues exceeding EUR 750 million. They include the design of the income inclusion rule (IIR), the undertaxed payment rule (UTPR) and the substance-based income exclusion. The announced timeline is that Pillar 2 should be transposed into domestic law over the course of 2022, to be effective in 2023, with the UTPR coming into effect in 2024.

To get clear insights into how these new sets of rules may impact your business, PwC has developed MARTA (Market Taxation Analyser) to model the impact and identify data challenges. MARTA allows you to understand the financial impact of Pillar 2 for business (e.g., the impact of historical losses and other tax assets or the impact of the substance-based income exclusion) and identifies the data points needed to prepare for compliance.

PwC's MARTA tool quantifies and visualizes the impact of the introduction of these new set of rules on your business. In a user-friendly way, the tool helps you take control of your scenario planning, enables broader stakeholder debate and gives you the insights to assess the appropriate responses to the challenges ahead.

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# Germany

## First court ruling: Branch capital allocation under Authorised OECD Approach

**Branch capital allocation to permanent establishments of insurance companies:**
**First court ruling on the branch capital allocation under the AOA in Germany**

In its ruling dated 13 December 2021 (case number 7 K 2379/20), the Munich Tax Court has ruled for the first time on the branch capital allocation to a domestic permanent establishment of a foreign insurance company since the implementation of the Authorised OECD Approach ("AOA") into the German tax law.

This ruling is of particular importance for all EU non-life insurance companies with a permanent establishment in Germany. According to the reasons for the judgment, the plaintiff had declared a negative branch capital under German-GAAP (HGB) for its German branch based on the application of the capital allocation method. The reason for the negative equity was that the new German Branch Profit Attribution Regulation (BsGaV) requires the taxpayer to prepare a fictitious balance sheet for the German branch using German-GAAP figures after the investment assets have been attributed to the various branches using the technical reserves as allocation key. Under German-GAAP and unlike under IFRS, non-life insurers have to record a claims equalization reserve (CER). Depending on the size of the CER, the investment assets attributed to the German branch do not suffice to cover all liabilities and technical reserves under German-GAAP. However, as the investment assets were attributed to all branches using a uniform allocation key reflective of the insurance risks entered into by the various branches, the plaintiff was of the opinion that no additional investment assets and, therewith, the respective investment yield should be attributed to the German branch – at the expense of all other European branches. Accordingly, the taxpayer filed its tax return for FY2015, which is the first year of application of the new German Branch Profit Attribution Regulation (BsGaV), declaring a negative branch capital.

In the tax audit for FY2015, the German tax authorities increased the income of the German branch of the EU insurer by applying the minimum capital allocation method in addition to the capital allocation method. The German tax auditor argued in line with marginal number 320 of the respective Administrative Principles on the Branch Profit Attribution (Verwaltungsgrundsätze Betriebsstättengewinnaufteilung) that the German branch has – in any case – to be attributed capital in the amount of the minimum capital needed for regulatory purposes. In the opinion of the German tax authorities, this follows directly from the basic principle of the AOA which requires to treat a permanent establishment as if it was a fully independent and separate entity. Since an independent insurance company must necessarily maintain a minimum regulatory capital, this also applies to the domestic permanent establishment of a foreign insurance company.

The taxpayer brought an action before the Munich Tax Court against the application of the minimum capitalization method. The taxpayer argued that he had applied correctly applied the capital allocation method as the standard method for the branch capital allocation. In his view, the minimum capital method is only needed as a floor if the taxpayer applies the escape clause for the application of another method than the capital allocation method and wishes to allocate to its domestic insurance branch a branch capital that is lower than what would result from the application of this standard method.

The Munich Tax Court dismissed the action and followed the argument brought forward by the German tax authorities that any independent insurance company needs a minimum capital and that such comparison is decisive.

The ruling of the Munich Tax Court is not convincing. It is to be hoped that the taxpayer appeals the court ruling which was allowed by the Munich Tax Court and that the Supreme Tax Court in Germany (BFH) overturns the ruling of the lower tax court and confirms the position of the taxpayer, i.e., that the taxpayer has only to apply the capital allocation method even if this results in a negative equity under German-GAAP. If each state would require the application of the minimum capital method all diversification effects of operating in a branch context and the capital efficiency gains from such branch structure would disappear. As a result, the application of the minimum capital method would lead to an allocation of extra investment assets for the German branch and – as a result – an excessively high proportion of the investment income would be subject to German taxation either at the expense of all other states in which the insurance company operates or directly leading to double taxation.

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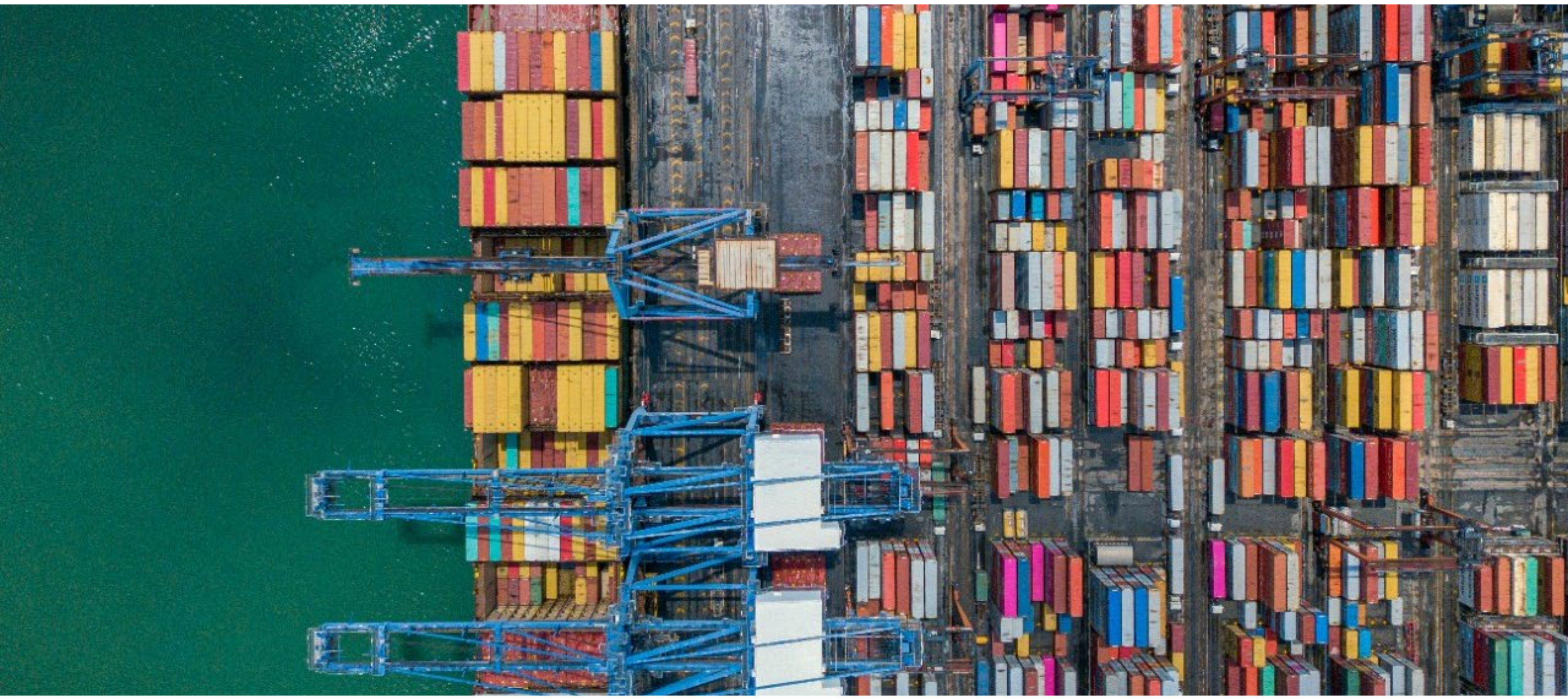

# Germany

## Circular of German Ministry of Finance on exemption from Insurance Premium Tax for Cargo Insurance

In October 2021 the German Ministry of Finance (BMF) issued a circular on the exemption from Insurance Premium Tax according (IPT) for premiums paid for Cargo Insurance. The circular reflects BMF's interpretation of the relevant exemption regarding the preconditions and the extent of the exemption and is binding for the fiscal authorities in Germany.

**Basics**

The payment of insurance premiums for insurance of transported goods against loss or damage as cargo insurance (including specie insurance and war risk insurance) is exempt from tax in Germany under section 4 para. 1 no. 10 of the German IPT Act (VersStG) if the insurance relates to goods that are transported exclusively outside of Germany or in cross-border traffic, including transit. The object of such insurance is to insure goods against the risk of damage during transport or related storage. BMF stresses in the circular that therefore only insurance against risks is covered by the exemption which materialise directly during transport or at least have a close temporal and local connection with the transport of the goods.

**Specific Conclusions by BMF**

On this basis BMF concludes that (only) the payment of premiums for the insurance policies covering the following additional risks are exempt from insurance tax:

**Risks in connection with the transport itself**

From BMF's point of view insurance for consequential damage to goods and financial losses (e.g. anticipated profit, customs duty) does not cover additional insured risks and only affects the determination of the sum insured and thus the amount of the premium.

In addition, risks in connection with pre-trip and post-trip are also exempt even in cases where the policy relates only to the period during which the goods are in Germany.

BMF also clarifies that, inter alia, premiums and premiums components for liability insurance and for vehicles used for the transport are not covered by the exemption and therefore subject to IPT.

**Risks in connection with storage**

According to BMF the insurance of transport-related interim storage also falls under the exemption, irrespective of whether it is an integral part of a transport insurance policy exempt from insurance tax up to a customary duration (up to 60 days) or whether an additional premium is paid due to a period exceeding the customary duration for the transport-related interim storage.

Interim storage arranged by the policyholder as an integral part of a cargo insurance policy shall also be exempted up to a customary duration (up to 60 days) if premiums or premium components for such storage are also exempt from insurance tax. This shall however not apply, if it is not an integral part of the policies or additional premiums for an exceedance of 60 days are to be paid under the contract and the policyholder caused the exceedance.

In this context BMF stresses that premiums and premium components for storage before and after transportation are not exempt. This shall also apply to insurance also covering storage facilities.

**Risks in connection with exhibitions**

BMF sees exhibition risk insurance as insurance for exhibition goods against loss or damage during transport, storage, and exhibition periods. Insofar as exhibition insurance relates to goods which are transported exclusively abroad or in cross-border traffic including transit, it shall be deemed as cargo insurance. Exhibitions abroad and goods transported in cross-border traffic for exhibitions in Germany are to be assessed in the same way.

**Insurance in other connection with the transport of goods**

Furthermore, BMF states that if a Difference in conditions/Difference in limits cover (DIC/DIL) relates to conditions of an exempt cargo insurance this cover is also exempt.

The exemption should also apply to insurance of goods transported and returned for the purpose of repair, restoration or similar

**Packaging of exempt and non-exempt insurance**

Regarding the packaging of exempt and non-exempt components in one policy BMF refers to a ruling of the Federal Fiscal Court of Germany dating from 2011 saying that the whole premium paid under the contract is subject to tax if the premium exempt from tax is not separated in the insurance policy.

BMF highlights in this respect that in general the premiums for policies not differentiating between exempted premiums for transport exclusively outside of Germany and inside of Germany are subject to IPT, especially also premiums paid for open cover policies.

However, since the premiums can only be determined after the conclusion of an open cover policy BMF states that it is sufficient if the percentage of premiums exempt/not-exempt is shown in the contract as an estimate and the concrete premium subject to IPT in Germany is shown on the final invoice. The premiums subject to IPT have in this case to be determined by the declaration forms the insurer receives from the policyholder.

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# Germany

## Federal Ministry of Finance produces draft bill for the amendment of rules on the interest on tax arrears/refunds

The Federal Ministry of Finance published a draft bill dated 14 February 2022, regulating the statutory interest rate for interest on tax arrears and tax refunds. The provision is to be applied retroactively following a decision of the Federal Constitutional Court. In its decision of 8 July 2021, the Constitutional Court gave the legislature time until 31 July 2022 to create a new regulation in line with the constitution for interest periods from 2019 onwards.

The present draft of a second law amending the German Tax Code (Abgabenordnung) and the Introductory Act to the German Tax Code (Einführungsgesetz zur Abgabenordnung) is intended to reduce the previously applicable interest rate for interest on tax arrears and refunds from 0.5% per month to 0.15% per month (i.e. 1.8% per year). The new interest rate should apply retroactively for interest periods from 1 January 1 2019, thus bringing it into line with constitutional requirements.

Where different interest rates are relevant for an interest period (e.g. interest periods running from 1 April 2018 onwards), the draft provision provides for a division into partial interest periods.
In order to ensure that the interest rate for interest on tax arrears and refunds remains appropriate in the future, the rate is to be evaluated every three years, taking into account the movement of the base interest rate under Section 247 of the German Civil Code. The evaluation will affect subsequent interest periods; the first evaluation is

set for 1 January 2026. It should be noted, however, that an adjustment to the interest rate will only be made if the base interest rate applicable on 1 January of the relevant year of the evaluation deviates from the base interest rate applicable at the time of the last determination/adjustment by more than one percentage point. The introduction of a flexible interest rate was rejected, according to the explanatory notes to the draft bill, because it would likely be significantly more difficult to manage and plan, particularly when calculating longer interest periods.

The aforementioned new provisions are to be applied in principle to all proceedings pending as at the publication date of the Amendment Act. However, this is expressly subject to provision in the General Tax Code governing the protection of legitimate expectations. Under this rule (Sec. 176 (1) Sentence 1 No. 1 General Tax Code), where the Constitutional Court decides that a law is null and void, the amendment or revocation of any assessment (here the interest assessment) may not lead to any disadvantage for the taxpayer.

Furthermore, when determining interest on refunds in cases of amendment, the interest rate that was used as the basis for the original determination for the refund interest shall be decisive. The rule on the protection of legitimate expectations is to be applied with the proviso that the overall result of the interest recalculation under the new rules may not result in the interest debtor being in a worse position than he was under the last interest assessment issued before application of these principles.

The explanatory notes to the draft bill reiterate again that the Constitutional Court's decision expressly does not extend to other interest calculation situations under the General Tax Code to the detriment of the taxpayer, namely to interest on deferrals, on evasion and on suspensions. The question of whether and to what extent a new regulation of the interest rate should also be introduced for interest other than interest on arrears and refunds or for late payment penalties will still require detailed examination; it was not the intention to deal with these issues with the current draft provisions.

In accordance with the requirements of the Constitutional Court, the new regulations should come into force by 31 July 2022 at the latest.

On March 30, 2022, the Federal Cabinet approved the draft of a second law amending the Fiscal Code and the Introductory Act to the German Tax Code. With full interest from January 1, 2019, there will be a retrospective new regulation of the interest rate for interest on arrears and refunds for all open cases.

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# Italy

## New rules on the disposal of run-off portfolios in Italy

Following the end of a public consultation process, the Italian Insurance Regulator (IVASS) repealed the ban for the insurance undertakings to transfer insurance portfolios formed only of claims.

This new regime aligns domestic rules on insurance portfolio transfers to those in force in other EU Member States allowing insurers to unlock value by disposing pure run-off portfolios.

From a tax perspective, the implications of the disposal of run-off portfolios must be analysed on a case-by-case basis considering the technical features of the transactions as well as the actual perimeter of the portfolios.

**Background**

The procedure for the authorization of the portfolio transfers by the Italian Supervisory Authority (IVASS) is ruled with Regulation no. 14 dated 18 February 2008 in accordance with the provision set forth by the Legislative Decree of 7 September 2005, no. 209 (Italian Insurance Code).

When this measure was taken, the Italian Supervisory Authority provided in its paper a restriction on the movement of the insurance portfolios as the transferability of the pure run-off portfolios was not allowed.

In more detail, Regulation no. 14/2008 introduced a definition of insurance portfolio within the scope of its application, according to which insurance portfolio is meant as “an aggregate of all the insurance contracts, including debts and credits linked to those contracts, having a common distinctive element that could be identified in belonging to the same or more lines of business, the distribution channel, the type of policyholder, the territorial area and any common element which allows to identify the complex of the transferred relationships". In addition, the mentioned Regulation expressly stated that a portfolio could not be composed solely by insurance claims.

As a result of this restriction, the run-off insurance market experienced a limited number of transactions in Italy as compared to other EU Countries, and always relating to portfolios combining both active and run-off policies.

**The new regulation**

Following a public consultation process, IVASS repealed the ban for the insurance undertakings to transfer portfolios formed solely of claims.

On 12 January 2021 with IVASS Order no. 107, the Italian Supervisory Authority amended the Regulation no. 14 by removing the "claims only" limitation from the definition of insurance portfolio.

Under these new rules, more aligned with those in force in other EU States, the insurance undertakings are now allowed to divest pure run-off portfolios.

As clarified by the Authority in its Report to Order no. 107, the amendment to IVASS Regulation anticipates a systematic reform of the secondary legislation issued by IVASS on extraordinary transactions to align it to the Solvency II legal framework. This amendment is also consistent with the risk-based approach provided by Solvency II[1]. Finally, the new regime is intended to provide insurers with a greater flexibility in managing the business, without prejudice to the rights and the interest of the insured parties.

**The expected benefits from the disposal of run-off portfolios**

The pressures of both Solvency II and the low interest rate environment are pushing insurers to consider available options for optimizing capital and managing the profitability of back books.

In life business, the backdrop of low interest rate environment has increased the challenge for insurers in meeting guaranteed returns on their back books, for annuity portfolios. Insurers seek to divest as they look to redeploy capital in more profitable lines of business, whereas potential buyers seek to improve asset management investing in longer dated and higher yielding structure and alternative assets.

In P&C business, the pressure to achieve underwriting profit, together with reduced investment returns, may lead insurers to putting into run-off their non-core lines of business[2].

In these contexts, the new IVASS regime on portfolio transfers should allow insurers to unlock value by disposing run-off portfolios. In particular, the transfer of a portfolio solely formed of claims is expected to produce a:

- SCR reduction with special regard to reserving and counterparty default risks.
- Reduction in the volatility of the results in the financial statements.
- Reduction in the correlated costs[3] with a positive impact on the SCR as well as on the results of the financial statements.
- Capital reallocation to the core business with consequent improvement in its remuneration.

[1] As a matter of fact, as noted by IVASS, the management of a run-off portfolios requires (i) the management of insurance relationships in compliance with the legal and the contractual provisions as well as (ii) the assumption of risk typically linked to the operation of the insurance coverages, ascribable to the proper quantification of the commitments taken.

[2] In many cases legacy non-life portfolios relate to aged tails, characterised by a high level direct and indirect management costs (e.g., dedicated run-off teams, outsource providers, etc).

[3] Due to, for example, the disposal of specialised claims management office/outsource providers.

**The tax implications depend on the kind of transfer implemented**

Domestic rules do not provide a specific regulation for the transfers of run-off portfolios for tax purposes.

The transfers of portfolios determine different tax implications depending on whether they are implemented as a mere transfer of contracts (article 1406 of the Italian Civil Code) or as a transfer of a business as going concern (article 2555 of the Italian Civil Code).

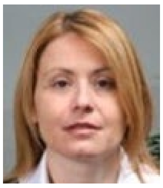
As a rule, according to article 2555 of the Italian Civil Code, a going concern is defined as "an aggregate of assets organized by an undertaker for the conduct of an undertaking".

A transfer of a run-off portfolio may qualify as a transfer of business as a going concern within the concept of the article 2555 to the extent that the portfolio concerned constitutes an autonomous aggregate of combined relationships and assets, sufficient to carry out the activities of that line of business or part of it.

This analysis must be made on a case-by-case basis considering the technical features of the transactions as well as the actual perimeter of the portfolios.

It should be noted that the transfer of run-off portfolios may be part of a more complex structure, where the risks related to the business are transferred - even before the legal disposal of the portfolio itself - by means of reinsurance transactions.

The complexities of such structure require proper analysis from a tax point of view. In this context, given the lack of specific guidelines from the Tax Office, the submission of a private ruling to the Italian Tax Authorities may be considered to obtain confirmation about the relevant tax treatment.



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# The Netherlands

## Update - IFRS 17 & Tax in the Netherlands

As we know IFRS 17 will replace the existing accounting rules for insurance contracts (IFRS 4) and will be effective as of 1 January 2023. The introduction of IFRS 17 has major consequences on the financial reporting of (re-)insurance companies.

The introduction of IFRS 17 also creates various challenges for tax departments of insurance companies (reporting under IFRS). Over the last year's we have assisted a number of tax departments in the Netherlands in assessing the tax (accounting) impact of IFRS 17 and hands-on support with the implementation of IFRS 17 in their existing tax reporting and accounting processes.

In this update we look back on the work performed for clients in the last years and the upcoming challenges tax departments still face.

**How did we support our clients?**

**Step I: Tax technical assessment**

The first step where we assisted tax departments in the Dutch insurance market was to assess whether the IFRS 17 valuation is acceptable for tax purposes or whether a separate provision (still) needs to be calculated for tax purposes.

In this case it is relevant to know that in the Netherlands there is a significant difference between the tax treatment of insurance liabilities for life and non-life insurers.

The applicable tax framework for non-life insurance products is based on sound business principles ('goed koopmansgebruik') such as prudency, simplicity, matching etc. Therefore, non-life insurance products are typically valued in line with the valuation of the technical insurance liability under Dutch GAAP or IFRS 4.

In our view it is expected that for the majority of the non-life products IFRS 17 will be to a large extent acceptable for tax purposes. The main differences are expected on the applied interest rates for discounting the cash flows and (potentially) on the risk adjustment. This is further supported by the assessment made by the Dutch association of insurers. As such the tax base of non-life insurers is significantly impacted by the introduction of IFRS 17.

Also, in preparation of IFRS 17, the tax authorities are currently performing a market scan on the tax valuation of the insurance liabilities of non-life insurers. This seems to be primarily aimed at the level of prudency in the provision and could result in increased scrutiny from the Dutch tax authorities.

For life insurers (e.g., life, pensions, and funeral) there are specific tax rules in place about the valuation of the technical insurance liability. These rules describe that the technical insurance liability is calculated on historical premium assumptions (‘tariff rates’). This means that the implementation of IFRS 17 should in principle have limited impact on the tax base of life insurers. There is ofcourse a significant impact on the deferred tax position of life insurers.

**Step II: Define tax requirements**

As a second step we actively supported various insurers in translating the tax rules in a set of tax (data) requirements. These were used when designing the new IFRS 17 finance and actuarial systems to ensure that the tax calculations could still be performed in the new IFRS 17 environments. It was important to ensure flexibility while building these new actuarial engines and finance systems as it could not be excluded that the tax authorities would have a different view on the acceptability of IFRS 17 for non-life insurers. Therefore, we have included certain requirements to the actuarial engine with respect to various (tax) parameters (e.g., discounting rates, confidence interval, CSM etc.) to ensure flexibility in the future calculation of the technical provision.

For life insurers the key was to ensure that all data remains available. As there is often a business case for cost reduction with the elimination of (legacy) IFRS 4 systems and processes. As this data is key for the future calculation of the tax provision additional safeguards had to be made to ensure the relevant data remains available in the new IFRS 17 systems and IT landscape.

**Step III: Setting up or modifying IT solutions and updating processes & controls**

With the introduction of IFRS 17 there will be a significant change in the existing financial accounting structure, (tax) management information and the way the (tax) data is derived from the source systems. To align the existing tax accounting and compliance processes with this new IFRS 17 environment we have assisted our clients in modifying their (tax) data flows, tax tax accounting and reporting systems and implemented various other tax technology solutions. As a next step we will also assist tax departments in updating the current processes, controls and control framework to assure the quality of the tax data in the new IFRS 17 landscape.

**Challenges towards implementation**

In 2021 most insurers performed ‘dry runs’ and/or ‘parallel runs’ to test the current state of the IFRS 17 systems and processes. Interestingly enough most insurers have initially kept tax out of scope and only added tax later on. Where tax has been involved, we see that there are often so many issues earlier on in the dataflow that the quality of the tax data is insufficient. As such, the majority tax departments still do not exactly know what the (numerical) impact of IFRS 17 will be. Furthermore, it is difficult to timely identify all remaining issues in the tax data which is expected to give issues towards the end of the year. Certainly because 2022 is already a parallel year for the comparative numbers. The tax data should already be ready and available so that the tax department can provide the input for the 2022 IFRS 17 balance sheet & P/L. Often this is not the case, or the data is not complete. This also makes it difficult to seek early engagement with relevant stakeholders such as the external auditor and potentially the tax authorities.

**The broader dialogue on the tax function (transformation)**

We've tailored our approach to the operating model of the tax department. A tax department limiting its role to that of an inhouse advisory capacity and tax compliance department has a significantly different approach then a tax department with a more centralized view aimed at being a business partner. The first typically limits its focus on getting the right data to prepare the tax accounting & reporting. Whereas the second will focus on actively improving the systems, processes and overall landscape to be in a position to add more value and further contribute to achieving the strategy of the organization.

Regardless of the existing view of the tax department, finance transformations of the scale and depth of IFRS 17 offer a unique opportunity to discuss the role of the tax function within the organization. Not only with the head of tax but also with the head of finance and/or CFO. Many tax departments have simply evolved over the years without reconsideration of their position within the organization. Does the operating model still fit the needs of the (new) CFO? In a world of increasing globalization and European legislation a more centralized model can provide benefits that a formerly decentralized approach aimed at local compliance cannot. Having these conversations is imperative to our continued support and opens the door to many other propositions such as tax technology, TCF support and managed services.


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# Spain

## Minimum taxation rule of 15%

Effective for fiscal years beginning on or after January 1, 2022, Spain has passed a minimum taxation rule of 15% for taxpayers subject to Corporate Income Tax (CIT). This rule applies also to permanent establishments of non-resident entities located in Spain.

The minimum taxation rule should apply to taxpayers (a) whose turnover has exceeded 20 million euros in the previous fiscal year, or (b) who are taxed under the tax consolidation regime, regardless of their turnover.

According to this rule, the taxpayers' net tax due (defined as tax due after applying tax allowances and tax credits) should not be less than the result of applying 15% to the taxable income (i) reduced by existing tax losses, (ii) reduced or increased for additions/reductions related to the tax loss levelling-off reserve and (ii) reduced by the investment reserve of the Special Economic and Tax Regime of the Canary Islands.

Please note that, when the taxpayer has the right to apply tax allowances and tax credits, the following rules must be considered while calculating the minimum tax rate:

1. Firstly, the tax due will be reduced by the amount of the applicable tax allowances and tax credits, including the tax allowance under the special economic and tax regime of the Canary Islands, and tax credits for investments made by Port Authorities. Tax credits for the avoidance of double taxation will then be applied, within the limits set forth for all these allowances/credits.

2. If after these allowances/credits have been applied, the resulting tax due is under the minimum net tax due calculated according to the above-

mentioned rules, then the resulting tax due will be exceptionally considered the net tax due.

3. If after the allowances/credits mentioned in section 1 above have been applied, the resulting tax due exceeds the minimum net tax due, then any other applicable tax credits will be applied (within the limits set forth for each of them) up to the amount of the minimum net tax due.

4. Tax credits under the Canary Islands special economic tax regime may be applied within their own limits, even if the amount resulting from their application is under the minimum net tax due.

5. Tax credits not applied due to the application of the minimum net tax due threshold may be applied in the following fiscal years in accordance with the relevant regulations.

Please note that the tax experts committee advising the Spanish Government has proposed this week to exclude the R&D tax benefits from the taxable income used in order to calculate the minimum net tax due. If this measure is finally adopted by the Spanish Government, it is expected to benefit the companies with a higher R&D activity.

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# Switzerland

## Embed ESG in the Insurance Tax Strategic Priorities

**Several legislative and sustainability developments as well as the publication of milestone documents have placed tax firmly on the sustainability agenda. Public tax transparency reporting is now a key element of any insurer's ESG strategy. And this is just the beginning.**

Sustainability and ESG criteria (environmental, social, governance) have developed from a niche existence to a core topic in society, politics, and among investors. At political level, ambitious steps are taken for achieving the United Nations' Sustainable Development Goals (SDGs) and the Paris Climate Agreement, such as the EU Green Deal, carbon emission trading systems, carbon and environmental taxes as well as (inter-)national tax incentives and subsidies promoting innovative low-emission technologies.

**ESG has entered the world of tax**

ESG considerations are increasingly affecting all business functions and activities – from human resources, finance and treasury, operations and supply chain, products and sales to analytics, tax, and legal. There is a growing awareness of the fact that companies have a more attractive and fit-for-purpose business model for the future and can achieve higher returns if they take ESG criteria into account. They are better positioned to cope with tighter and emerging regulations and legislations such as carbon taxes. Regulators are also paying attention to financial institutions and large institutional investors, as they can channel money flows into more sustainable sectors and technologies.

Tax is an important element for the investment strategy of an insurance company. Investing in green bonds and other green assets needs to be evaluated from an after-tax-return point of view, and tax incentives need to be taken into consideration. Insurance companies must evaluate how close their tax function is to the investment decisions and whether there is a need to involve the tax function any further. Additionally, insurance companies may be able to claim R&D credits in case they invest in technology that indirectly supports the environmental and social aspects of ESG. Regarding those social aspects, new flexible working models as well as diversity and inclusion topics may also have tax implications.

**Public tax transparency as a contributor to sustainability**

Insurers are required to disclose financial and tax data in accordance with internationally accepted financial reporting standards. But public tax transparency goes beyond such requirements. It is about the additional tax-related, non-financial information that companies report in relation to their tax governance framework, such as their tax strategy, their tax-paying behaviour, their tax risk management and how they contribute to the sustainability agenda of their organisation. It is about their commitments to comply with the letter as well as with the spirit of the tax laws and regulations in the jurisdictions in which they operate, not to transfer value created to low or nil tax jurisdictions, etc.

Further, quantitative data, such as country-by-country reporting and total tax and other economic contributions are also part of their public tax transparency. Public tax transparency is a means of communication to inform internal and external stakeholders of the contribution the business makes to public revenues and of what it undertakes regarding ESG principles and initiatives – based on the understanding that tax does not only have a financial impact, but also an impact on society and climate, and that it supports governments achieving their SDGs.

To name just two current factors that underline the importance of tax transparency: pandemic-induced budget deficits have shed a spotlight on paying a fair share of tax even more (it will be interesting to observe how the Pillar 2 of BEPS 2.0 may impact the "pay a fair share of tax" debate), and tax transparency is important because multinational insurance groups can disclose their contribution to public revenues to fund and steer sustainable growth and SDGs. In addition, taxes are a driver of change by providing the necessary tools for green fiscal policy and governance frameworks – ranging from carbon and plastic taxes to green subsidies and incentives to compliance and reporting requirements.

**Why is tax transparency important for insurers?**

The advantages of pro-actively publishing a public tax transparency report are manyfold. Tax is part of sustainability, and public tax transparency is part of sustainability reporting. It creates additional value for the organisation and is an opportunity to build up trust – not only with shareholders, but also with other external and internal stakeholders. It is a way to show that the company delivers sustainably on the bottom line and to build up a clear ESG reputation. Institutional investors are looking for fit-for-purpose tax governance frameworks that allow the tax functions to govern their tax affairs rigorously and with manageable risk positions. Important to note, it is not a matter of form, but a matter of substance; insurance tax functions should have a fit-for-purpose tax governance frameworks and make sure to live with it every day.

However, as positive as these developments are, challenges remain. In the growing field of information on sustainability, there are still too many different standards. There are no coherent requirements but an abundance of non-standardised metrics. To make ESG reporting meaningful and turn it into a useful tool for investors and the public alike, unified standards must be developed and established on a global scale. There is definitely room for improvement – in terms of reliable measures, as well as in companies' adoption of a tax transparency mindset.

Although in the EMEA region several insurers/reinsurers are already publishing tax transparency reports, there still many insurers/reinsurers that have not published or published very little. Further, the inconsistency amongst the existing reports does not offer to the readers any comparability options.

As governments are looking to reduce public sector deficits, there is likely to be greater scrutiny on the contribution companies make to public finances due to the demand for greater transparency. Furthermore, the climate change debate, and commitments to net zero, will influence future tax policy with a focus on taxes other than profit taxes. Total tax contribution data can help to highlight the broad contribution in taxes and provide data to inform policy discussions. The Total Tax Contribution survey of the members of the Association of British Insurers ((https://www.abi.org.uk/globalassets/files/publications/public/tax/2021-abi-total-tax-contribution.pdf)), for instance, shows that in 2020, the UK government was the largest beneficiary of the value distributed by the survey participants. Taxes borne and collected, paid to the UK government, accounted for 45.3% of value distributed.

**Embed ESG in the insurance tax strategic priorities**

ESG inevitably becomes an integral part of an insurance tax strategy. Insurance tax leaders should be able to identify risks and opportunities as well as implement sustainable tax strategic priorities to facilitate ESG transformation. The insurance tax function proactively has to engage with other internal ESG contributors. The time to act is now!

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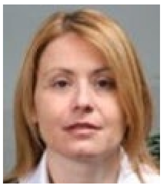

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