

MARSH INSIGHTS:

GLOBAL INSURANCE REGULATORY AND PREMIUM TAX UPDATE

The following insurance regulations and premium-related tax news could affect the insurance arrangements of a multinational group.

ARGENTINA – FOREIGN EXCHANGE CONTROL RESTRICTIONS LIFTED

It is understood that, on 16 December 2015, the new government removed the stringent foreign exchange control restrictions that have been in place since 2011. Going forward, depending on the circumstances, there will be no requirement to obtain formal authorisation from the Central Bank. This relaxation should ease the outflow of reinsurance premiums to foreign reinsurers by the local Argentinian fronting insurers.

BRAZIL – REINSURANCE REGULATIONS RELAXED

The Council of Private Insurance (Conselho Nacional de Seguros Privados, CNSP) in Brazil published Resolution No. 322 on 20 July 2015. The resolution will reduce existing reinsurance restrictions gradually over the next five years, starting from 1 January 2017.

The new limits for reinsurance contracts between companies (provided they are admitted or occasional reinsurers) with related parties or with companies belonging to the same financial conglomerate will be as follows:

- 20% until 31 December 2016.

- 30% from 1 January 2017 until 31 December 2017.

- 45% from 1 January 2018 until 31 December 2018.

- 60% from 1 January 2019 until 31 December 2019.

- 75% from 1 January 2020.

Furthermore, although the preferential offer of 40% of each reinsurance cession by local insurers to local reinsurers remains unchanged (local reinsurance companies still have the right of first refusal for 40% of the market premium), the minimum mandatory cession to local reinsurers will be gradually reduced as follows:

- 40% until 31 December 2016.

- 30% from 1 January 2017 until 31 December 2017.

- 25% from 1 January 2018 until 31 December 2018.

- 20% from 1 January 2019 until 31 December 2019.

- 15% from 1 January 2020.

FRANCE: TERRORISM FUND INCREASE

With effect from 1 January 2016, the terrorism fund contribution has increased from EUR3.30 to EUR4.30 per property policy.

HONG KONG – COMPULSORY INSURANCE FOR SOLICITORS

With effect from 1 March 2016, the Limited Liability Partnerships (Top-up Insurance) Rules require solicitor firms in Hong Kong that are limited liability partnerships to buy additional professional indemnity cover of HKD10 million for any one claim, in excess of the mandatory cover provided by the Solicitors Indemnity Fund. The top-up policy must cover all civil liability of the firm and may only be purchased from an authorised Hong Kong insurer or from Lloyd's.

INDIA – INCREASE IN SERVICE TAX ON INSURANCE PREMIUMS AND BROKER FEES

With effect from 15 November 2015, all insurance premiums and broker fees will be subject to an additional 0.5% levy, called the Swachh Bharat Cess (SBC). Effectively, the new rate of service tax plus SBC will be 14.5%.

NAMIBIA – COMPULSORY CESSIONS

The Namibia Financial Institutions Supervisory Authority (NAMFISA) issued a bulletin stating that, after 1 September 2015, any applications for foreign

insurance and reinsurance exemption must be submitted before the inception or renewal date, otherwise a penalty of NAD1,000 would be payable for each day during which such failure continues. All exemption applications must be accompanied by all 13 registered insurers' quotations, with the signatures of the authorised individuals, effective 8 June 2015, together with all relevant documentations. The quotations should be on the letterhead of the specific insurers. Documents required include, amongst others, the placing slip, policy schedule, renewal schedule, and the invoice.

UK – INCREASE IN INSURANCE PREMIUM TAX

The UK Government announced an increase in the UK Insurance Premium Tax (IPT) by 3.5% to 9.5%, with effect from 1 November 2015. All insurance policies incepting after this date will be subject to IPT at the rate of 9.5%. Premiums received between 1 November 2015 and 29 February 2016 relating to policies entered into before 1 November 2015 will continue to be liable to IPT at the rate of 6%. From 1 March 2016, all premiums received by insurers will be taxed at the new rate of 9.5%, regardless of when the policy was entered into. The higher rate of 20% for insurance supplied with selected goods and services (such as certain travel, motor cars, and domestic appliances) remains unchanged.

UK – INSURANCE ACT 2015

The Insurance Act 2015 (Act) comes into force on 12 August 2016. Unless the parties expressly contract out of the new regime, it will apply to all insurance and reinsurance policies that incept or are renewed or varied on or after 12 August 2016, if they are governed by the laws of England and Wales, Scotland, and Northern Ireland (even if the (re)insured is situated overseas).

The Act aims to address the imbalance between insurer and insured rights by making significant changes to several areas, including:

- The duty of disclosure and the remedies available to the insurer in the event of material non-disclosure and misrepresentation.
- The interpretation of warranties and terms not relevant to the loss.
- The abolition of basis of contract clauses.

US – FEDERAL EXCISE TAX ON REINSURANCE PREMIUMS

Following the decision of the United States Court of Appeals for the District of Columbia Circuit in the case of *Validus Reinsurance, Ltd v United States*, in February 2014, the Internal Revenue Service (IRS) has finally issued a revenue ruling in which it states that it will no longer apply the 1% federal excise tax to premiums paid on a policy of reinsurance issued by one foreign reinsurer to another foreign insurer or reinsurer.

The IRS will apply a 1% federal excise tax to reinsurance premiums paid on a policy of reinsurance issued by that foreign reinsurer to either a:

1. Foreign insurer that has elected to be treated as a domestic corporation under section 953(d); or
2. Foreign insurer or reinsurer that is exempt from excise tax on the premiums it receives because the premiums are effectively connected to the conduct of a US trade or business and taxable in the US.

ZAMBIA – LEVY ON INSURANCE PREMIUMS

No value added tax (VAT) is payable on insurance premiums. Instead, a newly introduced 3% levy is payable on insurance premiums with regard to insurance policies for all classes of risks with effect from 1 January 2016. The levy is payable at the time when an insurance premium is paid or becomes payable and is remitted by the insurer or the broker to the Commissioner-General not later than day 14 of the month following the one in which the levy becomes due.

CONTACT

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