

Main points of consideration regarding new Dutch decree on insurance premium tax

On February 14, 2017 the new Dutch decree on insurance premium tax was published (hereinafter: the decree). This replaces the Dutch decree of February 21, 2014 and contains several changes, which in summary concern the following aspects. The exemption for the insurance of seagoing vessels is, for example, extended with an exemption for the cover of the mortgage-related interest in a seagoing vessel. In addition to this, the exemption for export credit insurances has been elaborated in more detail. The approval for co-insurance has been tightened. Lastly, an important approval for intermediary activities by retailers/franchise holders has been added. The main changes are further discussed below.

1. Changes to exemption for the insurance of seagoing vessels

In the decree the statutory exemption for the insurance of seagoing vessels is explained in more detail and broadened, with the following points, in particular, being added.

- There was uncertainty in the market about whether insurance that actually covers a **mortgage-related interest** in a seagoing vessel (indirect) – as is the case with cover for the hull of a seagoing vessel (direct) – can take advantage of the exemption for insurance premium tax. The decree now includes conditions under which such additional (mortgage-related interest) insurances are also exempt from insurance premium tax if the creditor, rather than the ship-owner, takes out the insurance.
- The insurance of **inland waterway vessels** was already exempt from insurance premium tax if a supplementary marine shipping insurance was taken out. The decree now adds the condition that these inland waterway vessels also “(...) are suitable for and used other than incidentally for marine shipping”.
- The insurance of **pleasure crafts** is taxed. The decree now contains additional examples of pleasure crafts that can be insured without being subject to insurance premium tax (in essence because they are used publicly).

2. Changes to exemption for export credit insurances

The scope of the statutory exemption for export credit insurances created much uncertainty in the market. The decree now includes a separate section in which the scope of this insurance is explained in more detail.

Of importance is the statement that the exemption applies to the insurance of a Dutch interest, comprising the export of goods or services. According to the newly added text, a Dutch interest is only present if, as a result of some form of credit or capital, goods or services are exported from the Netherlands.

A Q&A document from the Dutch tax authorities' Insurance Products and Insurance Premium Tax knowledge group has also been announced, which elaborates further on the exemption. It is at present unclear when this document will be published. However, specific cases can be presented to the knowledge group.

3. Tightening of approval for the taxation of co-insurance

Under the old decree, it was possible, in the case of co-insurance, for the leading insurer to pay the insurance premium tax due. The specific conditions pertaining to this have been tightened. The leading insurer must now no longer only collect 'the premium', but rather 'the full premium'. Furthermore, the condition contained in the old decree – that the leading insurer partly re-insures the risk with the other insurers involved with the co-insurance – has been canceled. In this respect, the new decree suffices with the condition that the administration of the co-insurance insurers must show that this concerns an insurance which falls under these rules. In the case of co-insurance, the leading insurer that pays the insurance premium tax is thus advised to check whether it (still) complies with both these and the other conditions.

Furthermore of importance is that the leading insurer may only pay the insurance premium tax if the particular insurance was not taken out through an insurance broker that is liable for the tax instead. In the case of co-insurance, the intermediary is itself liable for the tax instead of the leading insurer if the intermediary collects the premiums itself or has someone else collect them.

4. Approval tax liability for intermediary activities by retailers/franchise holders

In practice, retailers/franchise holders can, under certain conditions, be liable for the insurance premium tax due. This can, for example, be the case if an insurance for consumer electronics (or other products) can be taken out via the retailer/franchise holder. For practical reasons, it has been approved that, instead of the retailer/franchise holder, the (EU/EEA) insurer will be liable for the insurance premium tax due if specific conditions are met. The approval not only avoids red tape for retailers/franchise holders, but also prevents the Dutch tax authorities having to deal with a proliferation of liable persons for Dutch insurance premium tax.

In general, retailers will be involved with the taking out of uncomplicated insurance and will therefore not be subject to the commission prohibition. This means that the gross premium they receive from their customers, in accordance with the agreements with the insurer, in principle includes any brokerage service fee (commission). The insurance premium tax on this gross premium will therefore, in principle, be paid in full by the (EU/EEA) insurer. Based on the idea that this approval is intended to ensure that the tax liability for retailers/franchise holders remains practical, we assume that the retailers/franchise holders will not be liable for insurance premium tax on any fee they receive out of the gross premium for their brokerage services. This is not however stated explicitly in the approval.

5. Practical consequences

The decree is especially relevant for insurers, intermediaries and brokers (including retailers/franchise holders). They are well advised to identify what the impact of the changes in the new decree will be. If insurance premium tax is due, we recommend moreover to carefully verify the extent to which they are liable for this.

The insurance premium tax regimes within the EU (and the rest of the world) differ significantly from one another. The decree on insurance premium tax of course only applies insofar as there is a Dutch risk. If the risk lies entirely or partly in another country, it will be necessary to also examine the rules applying in that country.

Meijburg & Co's insurance premium tax specialists would be pleased to help you identify the potential implications of the new decree on insurance premium tax. Feel free to contact one of them or your regular advisor at Meijburg & Co for more information.

Meijburg & Co
February 2017

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