

Übersetzung durch den Sprachendienst des Bundesministeriums der Finanzen.

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Version information: The translation reflects the revised version of the Insurance Tax Act of 27 April 2021 (Federal Law Gazette I, p. 874)

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## **Insurance Tax Act**

### **(Versicherungsteuergesetz – VersStG)**

The translation reflects the revised version of the Insurance Tax Act of 27 April 2021 (Federal Law Gazette I, p. 874)

#### **Section 1**

##### **Tax basis**

(1) The tax applies to the payment of an insurance premium based upon an insurance relationship which has come about either by contract or in some other way.

(2) If the insurance relationship is with an insurer who is established in the territory of the Member States of the European Union or of other Contracting States to the Agreement on the European Economic Area (EEA state), then the tax liability exists when insuring the following risks, regardless of the policyholder's registered office, residence or habitual abode:

1. risks related to immovables, in particular structures and facilities, and related to their contents except for goods in commercial transit if the objects are located within the territory of application of this Act;
2. risks related to vehicles of every type, which are to be registered or are registered in an official or officially recognised register in the territory of application of this Act, and which have a registration plate;
3. risks associated with travel or holidays on the basis of an insurance relationship with a term of not more than four months if the policyholder performs the legal acts needed to bring this insurance relationship into existence in the territory of application of this Act.

If the insurance relationship is established with an insurer who is established in an EEA state and if tax liability does not arise from sentence 1, tax liability exists when insuring

1. risks related to objects within the meaning of sentence 1 no 2, which are located outside of the territory of application of this Act,
2. risks related to vehicles within the meaning of sentence 1 no 2 which are to be registered or are registered in an official register outside the territory of application of this Act,
3. for risks associated with travel or holidays within the meaning of sentence 1 no 3 if the policyholder performs the legal acts needed to bring this insurance relationship into existence outside the territory of application of this Act,

4. a permanent establishment or other institution outside the territory of application of this Act of a non-natural person,

if the policyholder has their registered office, residence or habitual abode within the territory of application of this Act, unless the objects within the meaning of no 1 or the permanent establishment or other institution of the non-natural person within the meaning of no 4 are situated in an EEA state, the vehicle within the meaning of no 2 is registered in an official register of an EEA state or the legal acts needed to bring the insurance relationship within the meaning of no 3 into existence were performed in an EEA state. If the insurance covers risks or objects other than those specified in the first sentence above, in particular vehicles not subject to registration or non-registered vehicles, the tax liability exists if the policyholder:

1. is a natural person and, at the time when they pay the insurance premium, has their residence or habitual abode within the territory of application of this Act, or

2. is not a natural person and, at the time when they pay the insurance premium, the enterprise's registered office, the permanent establishment or the corresponding institution to which the insurance applies is located within the territory of application of this Act.

(3) If the insurance relationship is with an insurer who is established outside the territory of the Member States of the European Union and of the European Economic Area, then the tax liability arises if:

1. the policyholder, at the time when they pay the insurance premium, has their residence, habitual abode or registered office within the territory of application of this Act, or

2. an object is insured which was located within the territory of application of this Act at the time when the insurance relationship was established, or

3. this insurance relationship directly or indirectly applies to an enterprise, a permanent establishment or other institution within the territory of application of this Act; this is in particular the case for premises operations liability insurance or for professional indemnity insurance for staff of an enterprise, permanent establishment or other institution.

(4) The German Exclusive Economic Zone also belongs to the territory of application of this Act.

## **Section 2 Insurance Contracts**

(1) Where several persons or associations agree to bear in common losses or damage of a type which could be covered by an insurance policy, that agreement is also be deemed to constitute an insurance contract for the purposes of this Act.

(2) A contract under which the insurer undertakes to provide suretyship or other security for the policyholder shall not be deemed to constitute an insurance contract.

## **Section 3 Insurance premium**

(1) For the purposes of this Act, insurance premium means every type of payment which must be made to the insurer in order to establish and continue the insurance relationship. This especially includes:

1. premiums,
2. contributions
3. advance contributions,

4. advance payments
5. additional payments
6. charges and,
7. policy drafting fees and other ancillary costs.

The insurance premium does not include payments which must be made for a special service provided by the insurer or which are due to the behaviour of the individual policyholder. This especially includes the costs of issuing a replacement document and payment reminder expenses.

(2) If a dividend is set off against the regular premium payment and only the difference between the regular premium payment and the dividend is paid to the insurer, then this difference is the insurance premium. The same applies if it is not possible to set the dividend off against the regular premium payment and the credit notice concerning the dividend is presented to the policyholder together with the premium invoice.

#### **Section 4** **Exemptions from taxation**

(1) Tax exemption extends to the payment of the insurance premium:

1. for reinsurance;
2. for insurance taken out with associations of public-law bodies to cover expenses of public-law bodies for pensions and survivors' pensions for their members;
3. for accident insurance under the Seventh Book of the Social Security Code (*Siebtes Buch Sozialgesetzbuch*), unless it is based on section 140;
4. for unemployment insurance under the Third Book of the Social Security Code (*Drittes Buch Sozialgesetzbuch*) and for insurance based on the Expense Compensation Act (*Aufwendungsausgleichsgesetz*); this also applies to insurance taken out with an institution within the meaning of section 12 (1) of the Expense Compensation Act;
5. for insurance providing entitlement to sums of capital, pensions, or other payments in the case of
  - a) death, survival, or old age, or
  - b) sickness, nursing care dependency, occupational incapacity or disability, or of reduced earning capacity, where these claims serve to make payments to a natural person for whom the insured risk materialises (person at risk) or serve to make payments to close relatives of such persons at risk within the meaning of section 7 of the Act on Care-Giving Leave (*Pflegezeitgesetz*) or to their relatives within the meaning of section 15 of the Fiscal Code (*Abgabenordnung*).

The exemption from taxation pursuant to sentence 1 does not apply to accident insurance, liability insurance and other non-life insurance. Number 3 remains unaffected;

- 5a. for insurance based on the Fourth Division of the First Part of the Occupational Pensions Act (*Gesetz zur Verbesserung der betrieblichen Altersversorgung*) of 19 December 1974 (Federal Law Gazette I, p. 3610);
6. for insurance taken out with a wage equalisation fund set up by the parties to a collective wage agreement to support employees in the case of a loss of working time;
7. for an agreement as defined in section 2 (1) which provides support in case of industrial action or victimisation or which provides for legal protection by trade unions, employers' organisations or associations of these organisations to their members or to

other professional associations with a similar focus and their members. This also applies if the legal protection is provided by a legal person whose shares are 100% beneficially owned by one of the organisations mentioned and which only offers legal protection to the organisation and its members in accordance with their articles of association;

8. for insurance taken out by one of the following types of policyholder:
  - a) diplomatic missions of foreign countries accredited by the Federal Republic of Germany,
  - b) members of the diplomatic missions mentioned under letter a) and persons employed by these missions who have diplomatic immunity,
  - c) consular posts of foreign countries accredited in the Federal Republic of Germany if the head of the post is a citizen of the sending state and engages in no other remunerated activity in Germany besides his position in the consular post,
  - d) consular representatives accredited in the Federal Republic of Germany (consuls-general, consuls, vice consuls, consular agents) and persons employed by these consular representatives if they are citizens of the sending state and do not engage in any other remunerated activity in the Federal Republic of Germany besides their consular position.

The tax exemption applies only if reciprocity is granted;

9. for insurance of livestock if the sum insured does not exceed 4,000 euros. If a policyholder has several livestock insurance policies with the same insurer, then the tax exemption applies only if all the insured amounts together do not exceed this limit;

10. for insurance of transported goods against loss or damage as cargo insurance including transport insurance of valuables and war-risk insurance if the insurance covers goods which are transported exclusively abroad or in cross-border traffic including transit; this does not apply to the transport of goods between two places in Germany where the goods are only in transit abroad. The taxation of the payment of an insurance premium for liability insurance remains unaffected;

11. in the form of charges which are levied on participants in an income pool for the purpose of distributing, according to a predetermined key, the entire net income of the participants that is subject to the respective system of distribution and earned by the members in their own name and in their own right.

12. to mutual fire aid associations (*Brandunterstützungsvereine*), to the extent that the contribution levied in the event of an individual claim does not exceed 5,500 euros.

(2) If circumstances occur after payment of the insurance premium which, had they existed at the time of payment of the insurance premium, would have resulted in a tax exemption within the meaning of section 4 (1) no 5 (b) or in a tax liability, the tax exemption shall begin or end at the time at which these circumstances came into existence. If a tax exemption ends, the period for assessment begins at the end of the calendar year in which the tax payment debtor or the revenue authority becomes aware of the circumstance that caused the tax exemption to end.

## **Section 5**

### **Calculation, chargeability and statement of tax**

(1) The tax shall be calculated for the individual types of insurance as follows:

1. in general it is calculated from the insurance premium,

2. for insurance against damage to the insured produce of the soil arising from exposure to the weather-related natural hazards of hail, storm, heavy frost, drought, heavy rainfall or flooding, and for insurance against damage as a result of hail, storm, heavy rainfall or flooding taken out in agriculture and horticulture for glass used to protect produce of the soil, the tax is calculated from the sum insured and for each year of coverage,
3. only in the case of
  - a) fire insurance and insurance against business interruption by fire (section 3 (1) no 1 of the Fire Protection Tax Act (*Feuerschutzsteuergesetz*), on 60% of the insurance premium,
  - b) residential building insurance (section 3 (1) no 2 of the Fire Protection Tax Act), on 86% of the insurance premium,
  - c) home contents insurance (section 3 (1) no 3 of the Fire Protection Tax Act), on 85% of the insurance premium,

The Federal Central Tax Office (*Bundeszentralamt für Steuern*) may, upon application, permit the tax to be calculated not on actual receipts (cash accounting scheme), but on the insurance premium due in the tax return period pursuant to section 8 (2) (3) (accrual accounting scheme).

(2) In the case of the cash accounting scheme, the tax arises upon payment of the insurance premium if the payee is themselves liable to pay under section 7, if not, the tax arises upon receipt of the insurance premium. In the case of the accrual accounting scheme, the tax arises upon the due date of the insurance premium. The first and second sentences above are to be applied accordingly to proportional insurance premiums.

(3) The tax amount is to be stated openly in the invoice for the insurance premium and the tax rate, as well as the insurance tax number issued by the Federal Central Tax Office, under which the tax is to be remitted, are to be specified. In the case of tax-exempt insurance premiums, the underlying tax-exemption provision must be specified. If no invoice is issued for the insurance premium, the information specified in the first and second sentences above must be shown in other documents establishing the insurance relationship.

## **Section 6**

### **Tax rate**

(1) Except as specified in the following subsection, the tax is 19% of the insurance premium without insurance tax.

The amount of tax

1. for fire insurance and insurance against business interruption by fire (section 5 (1) sentence 1 no 3 (a): 22%;
2. for residential building insurance (section 5 (1), sentence 1, no 3, letter b): 19%; and
3. for home contents insurance (section 5 (1), sentence 1, no 3, letter c): 19%;
4. for insurance against damage to the insured produce of the soil arising from exposure to the weather-related natural hazards of hail, storm, heavy frost, drought, heavy rainfall or flooding, and for insurance against damage as a result of hail, storm, heavy rainfall or flooding taken out in agriculture and horticulture for glass used to protect produce of the soil, the tax is 0.3 per mille of the sum insured for each year of coverage;
5. for marine hull insurance: 3% of the insurance premium under the condition that the ship solely serves commercial purposes and is insured against the perils of the sea;
6. for accident insurance with premium refund: 3.8% of the insurance premium.

## Section 7

### Tax debtor, tax payment debtor and liable parties

(1) The policyholder is the tax debtor.

(2) The insurer is the tax payment debtor, unless subsections (3) to (5) below appoint another person as the tax payment debtor, or, under subsection (6) below, the policyholder, as the tax debtor, must pay the tax. The tax payment debtor must, as an independent liability, pay the tax on behalf of the policyholder.

(3) If the insurer has no residence or registered office in the European Union or the European Economic Area, but an agent with residence or registered office in the specified territories has been authorised to receive the insurance premium, then this party is the tax payment debtor.

(4) If several insurers have jointly taken on an insurance policy for the same policyholder to the effect that each of them has a certain share in the rights and obligations connected with the insurance policy, then one of the insurers with residence or registered office in the European Union or in the European Economic Area may be designated in writing by the other co-insurers to pay the tax for the other insurers as well.

(5) If payment of tax has been delegated in writing to an agent with residence or registered office in the European Union or the European Economic Area authorised to receive the insurance premium, then this agent is the tax payment debtor.

(6) If neither the insurer nor an agent authorised to receive the insurance premium has their residence or registered office in the European Union or the European Economic Area, then the policyholder must pay the tax.

(7) The following shall be liable for the payment of tax, unless the persons specified in numbers 1 to 3 below are themselves the tax payment debtor:

1. the insurer,
2. any other person who receives the insurance premium,
3. an insured person who, in return for a fee, obtains insurance cover from an insurance policy for the account of another. The liability extends to the tax that is chargeable on the insurance premium which is to be paid to the insurer in order to cover the risk of the insured person; in case of doubt, the payment made by the insured person is to be used as the basis.

(8) The tax debtor, tax payment debtor and any liable party are legitimate joint and several debtors. The liability for payment of tax is equivalent to the tax liability; it is not accessory in relation to the tax liability of the policyholder. A liable party may be held liable for the tax by means of a tax assessment notice or notice of liability. To define a taxpayer's period for assessment under sections 169 to 171 of the Fiscal Code, in each instance those circumstances that exist in relation to the person are the relevant ones; in particular, in the case of holding the tax payment debtor liable for the tax, the expiry of the period for assessment for the policyholder is irrelevant, and, in the case of holding the liable party liable for the tax, the expiry of the period for assessment for the tax payment debtor is irrelevant.

(9) In the relationship between the insurer and the policyholder, the tax is deemed to constitute part of the insurance premium to the extent that the collection and legal enforcement of the tax are involved.

## Section 7a Jurisdiction

The Federal Central Tax Office has jurisdiction.

## Section 8 Tax return, due date

(1) The tax payment debtor under section 7 (2), (3), (4) or (5) must, within 15 days of the end of each tax return period:

1. file a tax return using an officially prescribed data set via remote data transmission in which they must themselves calculate the tax which has been incurred in the tax return period (self-assessed tax return), and
2. pay over the tax which has arisen in the tax return period.

To avoid undue hardship, the Federal Central Tax Office may waive electronic transmission upon request; in such cases, the tax payment debtor must file the tax return using the officially prescribed form.

- (2) The tax return period is the calendar month. If the total tax for the previous calendar year amounted to no more than 6,000 euros, then the tax return period is the calendar quarter. If the total tax for the previous calendar year amounted to no more than 1,000 euros, then the tax return period is the calendar year.
- (3) If the policyholder has to pay the tax under section 7 (6), then, within 15 days of the end of the month in which the insurance premium was paid, they must file a tax return using an officially prescribed data set via remote data transmission and pay the tax determined by self-assessment. Subsection (1) sentence 2 applies accordingly.
- (4) If the party obliged to file the self-assessed tax return and pay the tax fails to file the self-assessed tax return by the tax return deadline, then the Federal Central Tax Office assesses the tax.

## Section 9

### Refund and subsequent payment of the tax

- (1) If the insurance premium is refunded in whole or in part because the insurance policy ends prematurely or because the insurance premium or the sum insured has been reduced, then the tax shall be refunded, upon application, to the extent that it would not have been chargeable when taking these circumstances into account. The tax shall be refunded to the tax payment debtor (section 7 (2) to (5)) or to the liable party (section 7 (7)) for the account of the tax debtor and in the case of section 7 (6) refunded to the policyholder. The tax shall not be refunded if the premium refund was explicitly insured. A refund can only be claimed if the tax was actually paid to the Federal Central Tax Office.
- (2) If, after payment of the insurance premium, the conditions for a tax exemption pursuant to section 4 (1) no 5 (b) come into existence, then the tax shall, upon application, be reimbursed insofar as the insurance premium was paid for a period of time following the occurrence of these circumstances. Subsection (1) sentences 2 and 4 shall apply accordingly.
- (3) If, in the case of the insurance of ships, the conditions for taxability and liability to tax cease to apply after payment of the insurance premium, then the tax shall, upon application, be reimbursed insofar as the insurance premium was paid for a period of time following the occurrence of these circumstances. Subsection (1) sentences 2 and 4 shall apply accordingly.
- (4) In the case of calculation using the accrual accounting scheme within the meaning of section 5 (1) sentence 2, the tax already paid on uncollected insurance premiums is to be reimbursed.
- (5) If the tax exemption within the meaning of section 4 (2) ceases to apply, then the tax is to be paid subsequently, to the extent that insurance premiums were paid for a period following the cessation of the applicability of the tax exemption.
- (6) If, in the case of the insurance of ships, the other conditions for taxability and liability to tax are fulfilled after payment of the insurance premium, then the tax is to be paid subsequently for the *pro rata temporis* insurance premium.
- (7) If tax is to be paid subsequently pursuant to subsections (5) and (6), then the insurer is authorised, for tax payment purposes, to subsequently request payment of the tax from the policyholder, or to reduce the insurance benefit accordingly upon occurrence of the insured event.

## Section 10

### **Accounting obligations, external auditing and amendment after external auditing**

(1) All joint and several debtors within the meaning of section 7 (8) sentence 1 who are obliged to keep accounts under the Fiscal Code or other laws, must keep records for the determination of tax and the basis on which it is calculated which contain all of the information relevant to taxation. This includes, in particular:

1. the name and address of the policyholder,
2. the number of the insurance policy; in the case of the authorised agents, the number of the respective insurer,
3. the sum insured,
4. the insurance premium, and namely the taxable and tax-exempt component and the repaid and unpaid insurance premium,
5. the tax amount,
6. the tax rate,
7. the IMO shop identification number allocated by Lloyd's Register on behalf of the International Maritime Organization,
8. the written authorisation within the meaning of section 7 (4) and (5).
9. in the case of open co-insurance, the available information about the other co-insurers and their respective participation in the contract.

Any person who is obliged to pay over the tax under section 7 (4) must record the total amount of the insurance premium as well as the numbers of the insurance policies of all of the participating insurers in their accounts. The insurers delegating the obligation to pay the tax must record in their accounts who has paid the tax for them. If the risk located within the territory of application of this Act is covered by an insurer who is not established in that territory of application, then that insurer must, upon request, submit in writing to the Federal Central Tax Office a complete schedule of the insurance relationships relating to these risks, including the information specified in the second sentence above. This obligation exists even if the insurer considers that the conditions for tax liability or payment of tax are not fulfilled.

(2) In the case of persons and associations of persons who mediate insurance policies or are authorised to receive payments on behalf of an insurer, an external audit (sections 193 to 203 of the Fiscal Code) to ascertain or clarify transactions which are taxable under this Act is also permissible to the extent it serves to determine the tax circumstances of other persons who, pursuant to section 7, are the tax debtor or tax payment debtor or who are liable for payment of the tax.

(3) An external audit is also permissible of persons and associations of person who have agreed upon an insurance contract within the meaning of section 2 or who, pursuant to section 7, are the tax debtor, tax payment debtor, or who are liable for payment of tax.

(4) Where an external audit determines that back taxes are due, or refunds must be made, these are to be assessed together with the tax for the last month, the last quarter or the last calendar year for the period audited. They are due one month from the date of disclosure of assessment.

## Section 10a

### **Obligation to disclose information**

(1) The authorities responsible for supervising the insurance enterprises shall notify the Federal Central Tax Office of any insurers which come to their knowledge.

(2) The registration court shall inform the Federal Central Tax Office of entries of non-profit associations or co-operative associations which deal with the conclusion of insurance

policies; this applies even if such non-profit or co-operative associations designate their services as services to which there is no legal entitlement.

### **Section 10b Application provisions**

If a tax rate is changed or if the insurance premium payment is exempt from tax, the new tax rate or the new exemption provision is to be applied to insurance premiums which fall due as of the entry into force of the new tax rate or of the new exemption provision. Sentence 1 shall apply to amended or repealed exemption provisions accordingly. If the due date of the insurance premium is changed for points in time after which a legal amendment takes effect, then the change in the due date is not to be taken into account with regard to tax returns and tax payments insofar as the change would lead to a lower tax. This applies accordingly if, in order to change the due date of the insurance premium, an insurance contract is terminated and immediately taken out again or if the due date of the insurance premium is set at a date before the conclusion of the insurance contract.

### **Section 10c Business activities of Lloyd's**

(1) Lloyd's general representative as tax payment debtor is to report and pay the tax incurred pursuant to this Act on behalf of the individual underwriters associated at Lloyd's, unless another person has demonstrably declared and paid the tax themselves.

(2) Sections 8, 9 and 10 shall apply accordingly.

(3) Tax assessments within the meaning of section 168 of the Fiscal Code, regulatory action, in particular administrative acts, and judicial instruments in the field of insurance tax law shall have an *erga omnes* effect for all individual underwriters involved in a specific insurance business. Enforcement measures against domestic assets of all individual underwriters associated at Lloyd's shall be permitted, provided these assets are managed by the general representative.

### **Section 11 Authorisations**

(1) The Federal Ministry of Finance (*Bundesministerium der Finanzen*) is authorised to issue statutory instruments not requiring the consent of the Bundesrat concerning

1. the precise definition of terms used in this Act,
2. the demarcation of tax liability as well as the extent of exemptions from taxation and of tax reductions, to the extent that these are needed to ensure the equity of the tax system and to avoid inequities in cases of hardship,
3. the extent of the tax base,
4. the taxation procedure, in particular on taxpayers' obligations and third parties' duty to provide assistance,
5. when and how tax is paid,
6. obligation to disclose information of authorities and courts,
7. the calculation of tax
  - a) when the tax is included in the insurance premium,
  - b) according to the insurance benefits,
  - c) in the case of amounts in foreign currency,

8. the assessment of the tax in special cases in flat-rate amounts. This applies in particular if determination of the tax amounts would be difficult and would entail costs out of all proportion to the amount of tax to be collected,
9. the refund of the tax.

(2) The Federal Ministry of Finance may promulgate this Act and the statutory instruments issued on the basis of this Act in the relevant applicable version with a new date and with a new title in the Federal Law Gazette.

### **Section 12 Transitional provision**

- (1) Section 1 (4) is to be applied to insurance premiums which cover insurance periods from 1 January 2014 onwards.
- (2) Section 5 (3) is to be applied for the first time to insurance premiums which fall due after 31 December 2013.
- (3) Section 4 (1) no 5 and section 4 (2) as amended by Article 1 no 3 of the Act of 3 December 2020 (Federal Law Gazette I p. 2659) are applicable for the first time to insurance contracts concluded after 31 December 2021. Section 4 no 5 as amended by Article 1 no 4 of the Act of 5 December 2012 (Federal Law Gazette I p. 2431) is applicable to insurance contracts concluded prior to 1 January 2022. Any first-time cover for a specific risk of the person at risk provided by the insurer shall be deemed to constitute a conclusion of a contract within the meaning of sentence 1. In the case of group insurance contracts, the date on which the person at risk is accepted as a member of the group insurance contract is deemed to be the date of the conclusion of the contract with regard to the person at risk.
- (4) Section 8 (1) and (3) as amended by Article 1 no 7 of the Act of 3 December 2020 (Federal Law Gazette I p. 2659) is applicable for the first time to tax returns filed on or after 1 January 2022. Section 8 as amended by Article 1 no 9 of the Act of 5 December 2012 (Federal Law Gazette I p. 2431) is applicable to tax returns filed prior to 1 January 2022.