

Übersetzung durch den Sprachendienst des Bundesministeriums der Finanzen.
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Fire Protection Tax Act

Fire Protection Act as published on 10 January 1996, (Federal Law Gazette I p. 18), most recently amended by Article 15 of the Act of 2 November 2015 (Federal Law Gazette I p. 1834)

Section 1 Tax basis

(1) Fire protection tax is payable on the collection of premiums only for the following types of insurance, and provided that the insured objects are located within the territory of application of this Act at the time when the insurance premium is collected:

1. fire insurance including insurance against business interruption by fire,
2. residential building insurance which includes risks which could be covered by fire insurance,
3. home contents insurance which includes risks which could be covered by fire insurance.

Insurance premiums not named in the first sentence above, numbers 1 to 3, but which do include risks which could be covered by fire insurance, shall not be subject to fire protection tax.

(2) Insurance within the meaning of subsection (1) above shall also be deemed to exist where several persons or associations of persons agree to bear in common losses or damage of a type which could be covered by insurance within the meaning of subsection (1) above.

(3) Tax liability shall be governed correspondingly by the provisions of section 1 subsections (2) and (3) of the Insurance Tax Act.

Section 2 Insurance premium

(1) The insurance premium for the purposes of this Act includes every type of payment which must be made to the insurer in order to establish and continue the insurance relationship. This includes in particular premiums in the usual sense, contributions, advance contributions, advances, additional payments, charges, also admission fees, 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 such as the cost of issuing a replacement document or 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, this difference

is the insurance premium. The same applies when 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 3 Assessment basis

(1) The assessment basis is

1. in the case of fire insurance (section 1 subsection (1), 1st sentence, number 1) a portion of 40 percent of the insurance premium,
2. in the case of residential building insurance (section 1 subsection (1), 1st sentence, number 2) a portion of 14 percent of the total amount of the insurance premium and
3. in the case of home contents insurance (section 1 subsection (1), 1st sentence, number 3) a portion of 15 percent of the total amount of the insurance premium.

(2) The tax shall be calculated on the portions (subsection (1) numbers 1, 2 and 3 above), which have been collected in the tax return period (actual receipts) (section 8 subsection (2)). If the insurance premium is refunded in whole or in part because the insurance policy ends prematurely or because the insurance premium has been reduced, the assessment basis is reduced by the amount of premium refunded on the portions.

(3) The Bundeszentralamt für Steuern (Federal Central Tax Office) may upon application permit the tax to be calculated not on actual receipts, but on the portions due (subsection (1) numbers 1, 2 and 3 above) (expected receipts) in the tax return period. If calculated from expected receipts, the tax already paid on the uncollected portions is to be deducted from the tax for the tax return period (section 8 subsection (2)) in which the insurer has partially or completely terminated the insurance.

(4) The insurance premium upon which the calculation of the tax is based shall not be reduced by the amount of the premiums paid for reinsurance.

(5) Amounts in foreign currency are to be converted according to the same provisions which apply to value-added tax.

Section 3a Exemption from taxation

Insurance premiums paid to mutual fire aid associations (Brandunterstützungsvereine) are exempt from the tax, to the extent that the contribution levied in the event of an individual claim does not exceed 5,500 euros.

Section 4 Tax rate

(1) Except as specified in the following subsection, the tax is 19 percent of the insurance premium.

(2) The tax rate for fire insurance (section 1 subsection (1), 1st sentence, number 1) is 22 percent.

(3) The insurance tax is not part of the insurance premium.

Section 5 Tax debtor

(1) The tax is owed by the insurer.

(2) If the insurer does not have his place of management, his registered office, his residence or a permanent establishment in a Member State of the European Union or in any other Contracting State of the Agreement on the European Economic Area, but an agent has been authorised to receive the insurance premium within the territory of application of this Act, then the tax is owed by that agent; if no authorised agent has been appointed, then the tax is owed by the policyholder.

Section 6 Reinsurance

If the insurer takes out reinsurance, he shall be entitled to reduce the premium which he pays to the reinsurer by the percentage which corresponds to the tax. The same shall apply to the reinsurer who in turn takes out reinsurance.

Section 7 Incurrence of the tax

The tax is incurred with the expiry of the month in which the insurance premium is collected (section 3 subsection (2)), is due (section 3 subsection (3)) or is paid (section 5 subsection (2) in conjunction with section 8 subsection (4), 3rd sentence).

Section 8 Tax return, due date

(1) The insurer (section 5 subsection (1)) or the authorised agent (section 5 subsection (2)) must, no later than the 15th day of the end of each tax return period (subsection (2) below)

1. submit a tax return using the officially prescribed form or by means of an automated process of the Federation in which he must himself calculate the tax which has arisen in the tax return period (self-assessed tax return), and

2. pay over the tax which has been incurred in the tax return period.

(2) The tax return period is in principle the calendar month. If the total tax for the previous calendar year amounted to no more than 2,400 euros, then the tax return period is the calendar quarter. If the total tax for the previous calendar year amounted to no more than 400 euros, then the tax return period is the calendar year.

(3) If the insurer or the authorised agent fails to submit the self-assessed tax return by the tax return deadline, the Bundeszentralamt für Steuern shall assess the tax. The tax shall be due on the 15th day after the end of the tax return period.

(4) If the policyholder owes the tax (section 5 subsection (2)), he must immediately inform the Bundeszentralamt für Steuern that he has taken out the insurance. The same obligation is incumbent upon the intermediary who has mediated the conclusion of such an insurance policy, provided he has his place of management, registered office or residence within the territory of application of this Act. The policyholder must, no later than the 15th day after the end of the month in which the insurance premium was paid, submit a tax return on an official form and pay over the tax which he himself has calculated.

Section 9 Accounting obligations and tax audits

(1) The insurer (section 5 subsection (1)) or the authorised agent (section 5 subsection (2)) is obligated to keep records about the determination of the tax and the basis on which it is calculated. These must contain all the information relevant to taxation, in particular

1. the name and address of the policyholder,
2. the number of the insurance policy,
3. the sum insured,
4. the insurance premium,
5. the tax amount.

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 Bundeszentralamt für Steuern 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, a tax 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 are obligated to pay over the tax as policyholders pursuant to section 5 subsection (2).

(3) A tax audit is also permissible of persons and associations of persons who have agreed upon an insurance contract as defined in section 1 subsection (2).

(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. Back taxes are due one month from the date of disclosure of assessment.

Section 10 Jurisdiction

The Bundeszentralamt für Steuern has authority.

Section 11 Apportionment

(1) The total revenue of the fire protection tax paid shall be apportioned in accordance with subsections (2) and (3) below.

(2) The apportionment shares of the individual federal states (Länder) in the total revenue of the fire protection tax shall be determined according to the following apportionment criteria:

1. 35 percent according to the shares in the gross value added of all sectors of the economy minus the value added of the sectors agriculture, forestry, fisheries, public and other service providers, education, health and private households;
2. 5 percent according to the shares in the gross value added of the sectors of the economy agriculture, forestry, and fisheries;
3. 40 percent according to the shares in the residential population at 40 percent and the shares in the stock of residential housing at 60 percent;
4. 20 percent according to the shares in private households.

These shall be based in each case on the latest data available from the Federal Statistical Office as of 1 May of the year following the apportionment year.

(3) The apportionment shall be done by the revenue authority of the Free and Hanseatic City of Hamburg. Apportionment shares shall be fixed taking into consideration the respective previous year's result. In accordance with these apportionment shares, the fire protection tax administered by the Bundeszentralamt für Steuern shall be distributed to the federal states and remitted to the federal states according to the monthly revenue in partial amounts by the 15th of the following month. Until the definitive apportionment shares are determined for the previous year, the current apportionment shares shall be used provisionally.

Section 12 Reporting obligations

(1) The authorities responsible for supervising the insurance enterprises shall notify the Bundeszentralamt für Steuern of any insurers which come to their knowledge.

(2) The registration court shall inform the Bundeszentralamt für Steuern 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 13 Rules for application

If a tax rate is changed, the new tax rate is to be applied to insurance premiums which fall due after the new tax rate enters into effect. If the due date of the insurance premium is changed to a point in time before or after a changed tax rate takes effect, and if the change would lead to the application of a lower tax rate, then the change is not to be taken into account in this respect. This shall apply correspondingly where 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. The second and third sentences above shall apply to changes in or fixing of the due date of the insurance premium made on or after 1 August 1993.

Section 14 Evaluation

The assessment basis (section 3 subsection (1)) shall be adjusted annually, beginning on 1 January 2012, by ordinance of the Federal Government with the consent of the Bundesrat (Upper House of the German Federal Parliament), so as to ensure that the revenue from the fire protection tax does not fall below the average of the years 2009 to 2011 (base rate). The assessment basis pursuant to section 5 subsection (1) number 3 Insurance Tax Act shall be adjusted accordingly.

Section 15 Authorisations

- (1) The Federal Government shall be authorised, with the consent of the Bundesrat, to issue ordinances on the portion of the assessment basis (section 3 subsection (1)).
- (2) The Federal Minister of Finance can publish this Act and the ordinances issued based on this Act in the Federal Law Gazette in the respective version in force with a new date and a new title.