

What is being amended by the Serial No. 92 General Communique on Transaction Taxes?

It has been a matter of dispute for a long period of time between the taxpayers and the tax administration whether salvage amounts are subject to banking and insurance transactions tax (“**BITT**”) or not. Indeed, criticisms are made towards the requirement to calculate BITT by the tax inspectors for the whole salvage amounts obtained by the taxpayers during the tax inspections and on the contrary, court decisions were given regarding the contradiction of such criticisms against the law.

Serial No. 92 General Communique on Transaction Taxes (“Communique”) has been published on Official Gazette dated October 11, 2022 and numbered 31980 and explanations have been made regarding taxation of money received in favor as a result of recourse and salvage transactions made by insurance companies in the Communique.

As it is known, the liability of insurance companies consists of indemnification of the loss suffered by the insured in the event of the realization of the risk. The damage is calculated by deducting the value of the damaged/scrap condition from the current value of the insured property. In the sector, insurance companies pay the fair value of the insured goods directly to the insured upon the realization of the risk and subsequently sell the scrap goods in practice. Amounts obtained from the sale of scrapped and insured goods are called salvage.

In the tax inspections carried out by the tax inspectors before the taxpayers engaged in insurance activities, it is claimed that the salvage amounts obtained from the sale of scrap goods should be evaluated independently of the compensation paid to the insured and in this context, it is recommended to establish BITT assessment with penalty based on complete amounts of salvage.

In practice, indemnity payments of insurance companies cover not only the decrease in the insured goods as a result of damage, but also the entire fair value of the insured goods and later salvage is obtained from the sale of the scrap goods. With this procedure, which can be summarized as first paying the current value to the insured and then collecting the salvage amount corresponding to the scrap goods, insurance companies only undertake the incurred loss from an economic point of view. Under these circumstances, it is clear that insurance companies do not engage in the sale of scrap goods other than their insurance activities and salvage is clearly related to the payment made to the insured at fair value. Indeed, approach of the courts regarding the matter is parallel with this explanations.

In accordance with first paragraph of article 3 of the Communique, it is stipulated that BITT base in terms of salvage amounts is (positive) difference between the salvage amount accrued through receiving scrap goods from the insured and salvage amount collected during the sales subsequently and BITT shall be calculated based on the difference between the salvage amount accrued in scope of the compensation paid to the insured and sales value (collected salvage amount) of the scrap goods according to subsequent paragraph.

It can be stated upon the collective evaluation of above explanations that tax administration has changed its approach regarding the subject and accepted the existence of connection between the salvage amounts and compensation payments therefore,

salvage amounts are in nature of loss decrease in terms of compensation payments. As a consequence, calculation of BITT on salvage amounts can only be possible limited to exceeding part in case salvage amount collected for the sales of scrap vehicle exceeds the salvage amount which is a part of compensation payment made to the insured.

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