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Tax Alert – Canada

Alberta “auditing” Insurance Act charges: don’t pay unless you’re sure you owe

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

The Province of Alberta has taken the unusual step of authorizing its Tax and Revenue Administration (TRA) to audit insureds for the charges payable under section 61 of the provincial *Insurance Act*. The *Insurance Act* is a regulatory statute but the TRA appears to be attempting to administer it like a tax statute.

Background

The issue specifically focuses on corporations and persons that have insured risks in Alberta (i.e., their Alberta operations or personnel) under a policy issued by an insurance company or insurer that is not licensed in Canada. The *Insurance Act* prohibits a person from entering into or renewing a contract of insurance to insure a risk in Alberta with an insurer, unless the insurer holds a valid Alberta insurance licence for the particular class of insurance for the covered risk.

Legislation

Section 61 of the *Insurance Act*, however, provides that an unlicensed insurer may undertake insurance in Alberta if:

- ▶ The insurance is effected without any solicitation whatsoever, and
- ▶ The insured, within 30 days after signing the contract of insurance, or receiving the policy issued by the insurer:
 - Notifies the Alberta Superintendent of Insurance in writing under oath of the terms of the insurance, the name of the insurer and the amount of the premium payable, and
 - Concurrently pays a charge equal to 50% of the premium payable.

If the written statement under oath and 50% charge is not paid within 30 days, a penalty equal to 50% of the 50% charge is also payable, meaning that the total charge is equal to 75% of the total insurance premium.

The Minister does have discretion to reduce the charge to as little as 10% of the premium, if the insured can establish that the particular coverage was not available from a licensed Alberta insurer.

There is a further exception if the contract of insurance is entered into or renewed through a special broker licensed under the *Insurance Act*.

Implications

To determine who the TRA intends to audit, we understand that the TRA has asked the Canada Revenue Agency for information, including a listing of all Alberta-based persons who self-assessed and paid insurance premium tax under Part I of the federal *Excise Tax Act*.

If an Alberta-based company enters into a contract of insurance with an unlicensed insurer without involvement of a special broker, the charge under section 61 may be payable. However, just because an insurance policy covers a risk in Alberta does not necessarily mean that the charge applies. For example, if the contract of insurance is entered into by a foreign parent company and the policy lists the parent's Canadian and Alberta subsidiaries as named insureds, it is not necessarily the case that any section 61 charge is payable.

As a consequence, it is strongly recommended that anyone receiving such an inquiry from the TRA or facing such an audit seek professional advice to help guide them through the process and protect their rights.

Learn more

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