

**Steptoe & Johnson LLP**

China Central Place, 29th Floor,  
Tower 2  
79 Jianguo Road, Chaoyang  
District  
Beijing, 100025  
Tel: +86 10 5834 1000  
Fax: +86 10 5969 6099

Avenue Louise 489  
3rd Floor  
B-1050 Brussels  
Belgium  
Tel: +32 2 626 0500  
Fax: +32 2 626 0510

115 South LaSalle Street  
Suite 3100  
Chicago, IL 60603  
Tel: 312.577.1300  
Fax: 312.577.1370

2121 Avenue of the Stars  
Suite 2800  
Los Angeles, CA 90067  
Tel: 310.734.3200  
Fax: 310.734.3300

633 West Fifth Street  
Suite 700  
Los Angeles, CA 90071  
Tel: 213.439.9400  
Fax: 213.439.9599

1114 Avenue of the Americas  
New York, NY 10036  
Tel: 212.506.3900  
Fax: 212.506.3950

201 E. Washington Street  
Suite 1600  
Phoenix, AZ 85004  
Tel: 602.257.5200  
Fax: 602.257.5299

1330 Connecticut Avenue, NW  
Washington, DC 20036  
Tel: 202.429.3000  
Fax: 202.429.3902

**Steptoe & Johnson**

99 Gresham Street  
London, EC2V 7NG  
England  
Tel: +44 20 7367 8000  
Fax: +44 20 7367 8001

## Insurance Tax

Steptoe & Johnson LLP attorneys represent life and property and casualty insurance company clients in a variety of tax matters. Our insurance tax practice encompasses both company and product tax issues, and involves both tax controversy and tax planning work:

- Audit and Appeals & Tax Litigation
- Tax Advice and IRS National Office Practice
- Mergers & Acquisitions, Workouts, and Debt Restructurings

Our tax attorneys have a wealth of technical knowledge in the insurance tax area, covering current and prior laws, as well as ongoing legislative and administrative developments. Equally important, our tax attorneys have extensive practical experience in advising insurance companies and in representing them in administrative and judicial forums.

Our insurance tax practice draws important support from Steptoe's overall tax practice, which is one of the strongest in the country. The diversity and strength of our tax practice give our insurance company clients access to in-depth experience that covers any federal tax issue that may arise.

### Audit and Appeals & Tax Litigation

In our active insurance tax controversy practice, our tax attorneys represent insurance company clients at all levels within the IRS and in the courts. During the audit phase, we assist our clients to analyze and evaluate factual and legal issues, to make presentations to local IRS officials in order to defend issues and eliminate potential adjustments, and prepare referrals to the IRS National Office for technical advice. We work closely with our clients during the administrative stages of a case:

- Responding to or contesting IRS information and document production requests
- Securing credible and effective expert witnesses
- Negotiating and documenting administrative settlements
- Drafting refund claims

We prepare protests of proposed IRS audit adjustments, and represent our clients in conferences with many different IRS Appeals Offices, including those in New York, Boston, Hartford, Philadelphia, and Des Moines. As a result, we are closely familiar with industry and coordinated tax issues. We represent insurance company clients in tax cases in the US Tax Court, the US Court of Federal

## Insurance Tax

Claims, and in federal district courts. While we have resolved many of these cases through settlement, we have presented others to the courts for decision. Currently, we are litigating several cases in district court, the Tax Court, and the Court of Federal Claims.

In many other non-litigated cases, we have obtained favorable settlements for insurance company clients following negotiations with either IRS or Department of Justice attorneys. We believe that settlement of litigation can be in the client's best interest at times, and we strive to obtain for our clients the most favorable and expeditious resolution of tax controversies. Our tax attorneys' experience plays a key role in the successful negotiation of settlements.

Our attorneys have significant practical trial and appellate experience. It is this experience, combined with our knowledge of substantive insurance company tax issues, that has enabled us to present insurance tax cases persuasively in the courts and, when appropriate, to negotiate effectively with Justice Department and IRS attorneys to achieve favorable settlements.

### **Tax Advice & IRS National Office Practice**

We regularly advise clients with respect to the following:

- Various insurance company tax matters, including reserve issues, reinsurance arrangements, captive arrangements, consolidated return questions, accounting and separate account issues, DAC and equity base issues, disclosure requirements, and penalty issues
- Investment tax issues, including original issue and market discount, interest rate agreements, hedging and swaps, and partnership, foreclosure, and workout issues
- Product tax issues, regarding, for example, annuity questions, variable contract issues, the definition of life insurance, and corporate-owned life insurance matters

We assist our insurance company clients in resolving important tax issues at the IRS National Office level. On the company tax side, for example, we have successfully represented in the National Office a group of life insurers seeking to block proposed section 818(c) regulations, individual companies seeking MODCO grandfather relief, several insurers seeking section 7805(b) relief in connection with the revocation of private letter rulings, and a group of life insurers seeking clarification of the treatment of full-time life insurance employees.

## Insurance Tax

On behalf of our clients, we also provide comments and testimony with respect to proposed regulations and other matters pending at the Department of the Treasury. For example, we submitted comments relating to the section 461(h) economic performance regulations, the section 848 DAC regulations, and the section 401(a)(9) minimum distribution regulations. We also have been active in resolving section 809 issues.

In the context of audit and Appeals Office proceedings, we request technical advice from the IRS National Office. Our technical advice requests cover various tax issues, including 1984 Act fresh start issues, section 807 reserve issues, policyholder dividend issues, and separate account questions.

In addition, we assist our insurance company clients in National Office cases involving product tax issues. For example, we have obtained favorable rulings involving the section 7702 status of contracts with secondary interest guarantees and, in another case, contracts where a change in insurer occurs in connection with an assumption reinsurance agreement. We seek National Office advice, for example, for waivers of section 7702 “failures” and various variable contract issues.

In addition to the formal National Office contacts described above (ruling requests, technical advice requests, ruling comments, etc.), we maintain regular informal contacts with Treasury and IRS officials that enable us to respond quickly in providing information to our clients and in presenting our client's concerns to those officials.

### **Mergers & Acquisitions, Workouts, & Debt Restructurings**

Steptoe represents insurance company clients with respect to acquisitions, restructurings, and dispositions, both taxable and tax free. In this regard, we provide advice with respect to proposed insurance company acquisitions, with emphasis on structuring tax-free reorganizations under section 368, tax attribute issues under sections 381 and 382, consolidation, assumption reinsurance, DAC, product qualification, and premium tax issues.

We also help structure insurance company asset and stock acquisitions and dispositions. In these transactions, we analyze section 304, section 338, consolidation, DAC, and reinsurance issues. We likewise give advice regarding tax sharing agreements.

In addition, we advise clients regarding forming holding companies, arranging insurance company joint ventures, and selling interests in those arrangements. In this context, we consider section 338, assumption reinsurance, and consolidation issues. Our transactional work involves issuing opinion letters; discussing issues with Congressional, Treasury, and IRS personnel; and pursuing IRS private

## Insurance Tax

letter rulings.

We also provide tax advice to both debtors and creditors in informal workouts, bankruptcy cases, and corporate debt restructurings. In these contexts, we advise on issues concerning the recognition of gain or loss by the creditor, as well as bad debt or worthless securities deductions that may be available.

We also consider whether the modification of the terms of the debt instrument in these cases will give rise to cancellation of indebtedness income for the debtor, and whether original issue discount, acquisition premium, amortizable bond premium, bond issuance premium, and bond retirement premium will arise. We often advise clients regarding the special rules that apply when debt is assumed in connection with a sale or exchange of property and the debt is materially modified as part of the sale or exchange.

In corporate debt restructurings, we advise on qualification as a tax-free recapitalization, the application of sections 382 and 269, the allocation of payments to principal and interest, and debt-equity considerations. We consider cash-for-debt exchanges, debt-for-debt exchanges, stock-for-debt exchanges, the acquisition of debt by related parties, and certain tax-free reorganizations.

## Representative Matters

- *Phoenix Mutual Life Ins. Co. v. Commissioner*, in which the Tax Court ruled in the company's favor on each of the four issues presented: allocation of agents' commissions to investment expenses, deferred and uncollected premiums on group term life insurance contracts, disability-disabled lives reserves, and prepayment premiums.
- *New York Life Insurance Company v. United States*, in which the Court of Federal Claims ruled in the company's favor on a "payment" versus "deposit" issue, and was affirmed by the Federal Circuit.