



## The Foreign Tax Man Cometh

by Richard Asquith

### Scope of Insurance Premium Tax

IPT is a worldwide tax, in many forms, on insurance contracts. It is generally calculated as a percentage of the gross premium. In most countries, initially, it is the insurer or captive who is responsible for the calculation, collection and payment of any taxes.

In most countries, however, the policyholder is next in line for the tax liability. Should the contract issuer fail to take care of the IPT, then the tax authorities are able to pursue the insured party.

In addition to IPT, there are also a number of other levies on insurance, payable to various local bodies. These parafiscal charges range from the standard fire brigade levy on property in most territories through to the funding of national priorities, such as contributions for earthquake losses in Iceland.

Many countries exclude life and marine cover from IPT, however, and reinsurance is largely exempt.

### Where is the IPT Due?

For many years, the insurance premium tax liability was determined by the place where the contract was written. In Europe, the location of the risk was clarified in the second non-life directive.

This last point was underlined in a key European Court of Justice case from 2001. This case centered on the Norwegian engineering giant, Kvaerner, which had taken out insurance cover in London for its European subsidiaries. At the time of the policy being written, IPT was calculated on the basis of UK tax rules. The Dutch tax authorities brought this case, claiming that elements of the insurance risks covering Kvaerner's Dutch operations were instead liable to Dutch IPT. This view was upheld, and the policyholder was held liable for the Dutch IPT.

Following this case, there has been a scramble by international insurers and captives to be fully compliant with local tax regulations, especially in Europe.

### European IPT Compliance

Unlike VAT, a sales tax based on European Union rules, there is no overriding tax-setting authority for European IPT. This means there are many variations in terms of rates, treatment of classes, payment methods, etc.

What has simplified the process for international insurers is the Freedom of Services regime. This enables insurers and captives to write business across European borders without having local branches. European insurers are required to seek "Passporting Rights" from their local regulator. In many countries, a local fiscal representative must be appointed that deals with the tax authorities on behalf of the insurer, including filings and settlement of any taxes.

Non-European insurers can often write business across the region on a non-admitted basis. The tax authorities, however, often then view the policyholder as liable in the first instance. This has

important implications, as we will see below.

### **Beyond the United States & Europe**

For global insurance programs outside of the United States and Europe, IPT compliance is tied up with local insurance regulation. For many global programs, if there is a local underlying policy, compliance with local tax is taken care of by the local agent/broker.

Many insurers, however, still work on a non-admitted basis internationally-despite it being illegal in a number of countries. Since most countries' regulators and legislation actually ignores non-admitted contracts, tax has been overlooked too.

To cover the risk manager's potential IPT liability, always include a clause indemnifying the insured against any foreign taxes.

### **Collection Time**

In the past 18 months, IPT has caught the attention of foreign tax authorities. The obvious reason is the growth of controlled master programs from abroad-and who better to tax than a foreign insurance company? But local insurers, through their national insurance associations, have also been lobbying their tax office for a fairer implementation of local taxes on overseas insurers.

Cases of the tax authorities' interest grow by the day. For example, authorities in Germany and elsewhere are writing to foreign insurers asking them to declare any risks covered in their territories. This includes signing statements of policy for dealing with the local IPT.

Many policyholders have also been asked to confirm the tax treatment on their coverage. This is leading many corporations and their captive managers to seek indemnities from their insurers.

### **Avoiding the Tax Man**

IPT on international insurance has always been a complex and confusing area. With heightened interest from the tax man, however, this now has to be tackled. Policyholders and risk managers realize that they are on the firing line. Corporate governance requirements aside, the thought of overseas tax authorities imposing fines and penalties is focusing minds in the industry.

Risk managers should push their insurers or brokers to demonstrate that IPT is being handled. Otherwise, they may be surprised by a call from the inquisitive foreign tax man.

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