

FROM: Manager, International Tax, Taxation Department
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SUBJECT: INSURANCE PREMIUM TAX
SUBJECT AREA(S):
ATTACHMENT: **Appendix 1**
ACTION POINTS: **For information [Syndicates to check that adequate information kept]**
DEADLINE:

1. Introduction.

1.1 This market bulletin clarifies several issues regarding the definition of establishment for UK insurance premium tax purposes and reminds underwriters and brokers of the way the de minimis rule operates.

1.2 Its content has been agreed with Customs and Excise.

2. Establishment.

2.1 IPT is payable on all risks which are situated in the United Kingdom unless they are specifically exempted. The rules for determining the location of a risk are summarised in Appendix 1.

2.2 For many risks the location is determined by where the insured has its business establishments. For these purposes a business establishment includes a branch, representative office, factory, workshop, mines, oil and gas wells and quarries. It must have a degree of permanence. So, for example, a construction site where the work will take more than twelve months can constitute a permanent establishment but a shorter-term project lasting less than twelve months would not.

Customs and Excise take the view that because a subsidiary company is a legal entity in its own right it cannot be a business establishment of the parent company. However, the European Court of Justice is currently considering the status of subsidiaries when determining the location of risk for IPT purposes and its decision is expected to clarify the position.

- 2.3 Lloyd's and Customs and Excise have recently reviewed the way the establishment rules apply to two particular types of insurance, kidnap and ransom and political risks.

Kidnap and Ransom.

Because of the confidential nature of this business a company may not be aware that its employees are covered by a kidnap and ransom policy. This can happen, for example, where a parent company takes out a policy which covers employees working for its subsidiary companies as well as the parent company and pays the whole of the premium. If the parent or any of the subsidiary companies whose employees are covered by the policy are in the UK, the premium must be apportioned and IPT is due on the proportion which covers the business establishments in the UK. The apportionment must be made on a just and reasonable basis.

So if, for example, a UK parent company with French and German subsidiaries takes out a kidnap and ransom policy and the employees of all three companies are covered, the premium must be apportioned. IPT is due on the proportion of the premium covering UK parent company and the proportions covering the subsidiary companies are subject to French and German premium taxes respectively. This applies even if the French and German subsidiary companies are not aware that a policy has been taken out and the UK parent pays the premium.

Underwriters are reminded that they may be required to substantiate the liability and/or apportionment of a premium to Customs & Excise.

Political Risks.

If a UK company takes out a political risks policy covering assets of an overseas business establishment or subsidiary, IPT can be due in certain circumstances. For example, if the policy protects the investment of the UK company in the overseas establishment and compensates it for the loss of the capital invested, Customs and Excise consider that the risk relates to the UK company and IPT is payable on the premium. They also believe that a policy covering the equity investment of an UK parent company in an overseas subsidiary is liable to IPT.

If the risk can be shown to attach to the overseas establishment or subsidiary, IPT will not be due although there may be an exposure to premium taxes in the country where it is located. This could happen, for example, if the overseas establishment or subsidiary is the policyholder or in the case of property where the policy covers its loss through a political action. For policies, which cover buildings and their contents, location is determined by the location of the property.

Underwriters have questioned this interpretation in respect of certain policies but it is suggested that, as a practical measure, the approach advocated by Customs and Excise is followed. The Political Risks Sub-committee of the NMA endorses this approach.

3. The De Minimis Extra-Statutory Concession.

- 3.1 There is an extra-statutory concession, which applies to contracts, which mainly cover risks, which are not subject to IPT. If the total premium including any additional, return or adjustment premiums, is £500,000 or less **and** 10% or less is attributable to risks which are subject to IPT, the whole of the premium can be treated as non-taxable.
- 3.2 Any insurer who uses the concession is obliged to monitor the premiums received and provide Customs and Excise on request with any information which they may reasonably require about the number and value of the insurance contracts qualifying for the exemption.
- 3.3 Customs and Excise have reviewed the operation of the concession in audit visits to a number of insurers and have been concerned about the standard of record keeping. These concerns have led them to consider withdrawing the concession because they believe that unless the contract is clearly coded as de minimis insurers may not notice a later change in liability for example when additional or return premiums take the policy outside the de minimis limits. Following representations from the ABI and Lloyd's, Customs have agreed to leave the concession in place but they have warned that they will review its use later this year.
- 3.4 It is therefore essential that syndicates should keep a record of all contracts where the concession has been used. Customs may ask to see this record during an audit visit to satisfy themselves that the terms of the concession have been correctly applied.
- 3.5 The de minimis concession has considerable administrative benefit to insurers particularly as regards London Insurance Market business and syndicates are therefore asked to ensure that adequate records are kept.

This bulletin has been issued to all managing agents. If you have any queries will you please contact me on Lloyd's extension 6860 in the Taxation Department.

Mrs M C McLeod
Taxation Department

Appendix 1

Location of Risk

The rules for determining whether a risk is located in the United Kingdom broadly follow those set out in the second General Insurance Directive which are reflected in United Kingdom law in the Insurance Companies Act. These rules are reproduced in the Finance Act 1994 at paragraph 8 (2) of Schedule 7A.

A risk is located in the United Kingdom if the insurance :

- (a) relates to a building, its contents or both and the property is located in the United Kingdom.
- (b) relates to vehicles of any type and the vehicle is registered in the United Kingdom. [“vehicle” includes motor vehicles, ships, yachts and aircraft]
- (c) is a policy of a duration of four months or less covering travel or holiday risks if the policy is taken out in the United Kingdom.
- (d) Is a case not covered by (a) to (c) above and the policyholder is either:
 - (i) an individual who has his or her habitual residence in the United Kingdom at the date the contract is entered into; or
 - (ii) a business and the establishment to which the policy relates is in the United Kingdom.

For IPT purposes the United Kingdom consists of England, Scotland, Wales and Northern Ireland and waters within twelve nautical miles of their coastline but it excludes the Isle of Man, the Channel Islands and Gibraltar.