

Summary: Intervention & Options

Department /Agency: HM Revenue & Customs	Title: Impact Assessment of the review of the Insurance Premium Tax (IPT) tax representative provisions	
Stage: Final Proposal	Version: 1.0	Date: 12 March 2008
Related Publications: Insurance Premium Tax (IPT) - Consultation on the tax representative requirements for overseas insurers		

Available to view or download at:

<http://www.hmrc.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

The insurance industry inform us that the current UK IPT rules, which require an overseas insurer to appoint a joint and severally liable tax representative, cause an increase in compliance costs, administrative burdens and unfair competition. Recent ECJ judgments have also caused the UK to reflect on areas of law which impose personal liability on third parties for others fiscal debts.

Government intervention is necessary to amend the legislation to relax the rules, and ensure compliance with EC Treaty freedoms.

What are the policy objectives and the intended effects?

To ensure the insurance industry does not face undue regulatory and compliance burdens, to ensure domestic insurers do not face unfair competition from non compliant overseas insurers and to reduce the barriers to cross border trade.

What policy options have been considered? Please justify any preferred option.

1. Removal of requirement to appoint a tax representative for all overseas insurers with no business establishment in the UK. This is the preferred option as it fully achieves the objectives, in the most straightforward way, without the addition of complicated legislation.
2. Removal of requirement to appoint a tax representative for all EU insurers.
3. Removal of joint and several liability requirement.
4. Introduction of an IPT registration threshold.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Compliance costs are routinely reviewed after one to three years.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Jane Kennedy.....Date: 24 February 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'		
	One-off (Transition) Yrs			
	£ Negligible			
	Average Annual Cost (excluding one-off)			
	£ Negligible	Total Cost (PV)	£ Negligible	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'		
	One-off Yrs			
	£ Nil			
	Average Annual Benefit (excluding one-off)			
	£ £1.4m to £3.5m	Total Benefit (PV)	£ £1.4m to £3.5m	
Other key non-monetised benefits by 'main affected groups'				
The reduction in the cost of compliance for foreign insurers addresses the problem of unfair competition raised by the UK insurance industry.				

Key Assumptions/Sensitivities/Risks

The consultation failed to produce any information on the cost of a joint and severally liable tax representative. The annual benefits have been calculated using a broad range for the average cost saving to foreign insurers registered for IPT. The range is subject to some uncertainty.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	Royal Assent
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ N/A
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Nil Small Nil Medium Nil Large Nil
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of Negligible Decrease of £	Net Impact	£ Negligible

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Background

Insurance Premium Tax (IPT) is a tax payable by insurers on premiums received under taxable insurance contracts in respect of risks located in the UK. IPT applies to both UK-based and overseas insurers. As there is no IPT registration threshold, every insurer writing taxable risks located in the UK is required to register for IPT. Insurers with no business establishment in the UK are required to appoint a tax representative. The tax representative is, by law, jointly and severally liable with the insurer for compliance with the IPT rules and for the tax due.

The requirement to appoint a tax representative for IPT has been unchanged since the tax was introduced in 1994. It was modelled on a similar requirement for VAT, which had been in force since the introduction of that tax in 1973. The requirement for overseas businesses to appoint a tax representative with joint and several liability for VAT debts was removed from UK legislation in 2002 so that the requirement no longer applied to persons in the EU, and only by direction to non-EU persons. This followed the extension of the Mutual Assistance provisions (now known as Administrative Cooperation) on exchange of information and recovery of debt to VAT. These provisions were extended to IPT in 2004 and apply to all EU resident insurers.

Furthermore, the UK has been considering the tax representative requirements in the light of recent European Court judgments concerning infringement of Treaty provisions on the freedom to provide services and freedom of establishment. A very recent Belgian case (C-522/04 Commission v Belgium) has caused the European Commission to request member states to reflect on the judgment which found that provisions which imposed the appointment of fiscal representatives with personal liability contravened these Treaty principles.

Rationale for Government intervention

Representations from the insurance sector have raised questions around the continued need for the appointment of an IPT tax representative, focussing in particular on the difficulties caused by the requirement that the tax representative has joint and several liability for the payment of unpaid taxes. The concerns were that the requirement was ineffective and resulted in

- An increase in compliance costs for overseas insurers
- Unfair competition between UK insurers and overseas insurers who do not comply with the requirements and consequently do not account for the tax.

Government intervention is required to analyse these claims and to make any necessary changes to the legislation to ensure these concerns are addressed.

Policy objective

The Government is keen to ensure that, in the collection of tax due in the UK, it does not impose unnecessary and burdensome requirements on businesses. It also wants to ensure that domestic insurers do not face unfair competition from non compliant overseas insurers, while at the same time reducing the barriers to cross border trade. The effect of the preferred option following the consultation will achieve this objective by removing the requirement for all overseas insurers to appoint a joint and severally liable tax representative, and ensuring the rules on collection of tax from third parties are fully compliant with the EU Treaty principles on freedom to provide services, and freedom of establishment.

Policy options

1. Removal of requirement to appoint a tax representative for all overseas insurers.

The preferred option is the removal of the requirement to appoint a tax representative in its entirety. A non-UK based insurer writing insurance risk located in the UK will still be required to register for IPT, but will no longer have the additional burden of appointing a joint and severally liable tax representative, and requesting HMRC approval for the tax representative. Instead, the overseas insurer, once registered with HMRC, can choose to manage its IPT affairs directly with HMRC, or it may appoint a tax agent, who does not have the joint and several liability requirement, to act on its behalf.

Expected Impact

The expected impact of the measure will be to remove the burdensome requirement for overseas insurers to appoint a tax representative who has joint and several liability for the tax due from the insurer. This reduction in real and administrative burden costs should mean there are less barriers to overseas insurers registering for IPT in the UK and paying the tax due, meaning a removal of barriers to trade, and a removal of the unfair competition currently in place from non compliant overseas insurers.

Sectors affected

The main impact of the removal of the requirement for foreign insurers to have a tax representative with joint and several liability risks will be a reduction in the compliance costs of foreign insurers. The reduction in compliance costs may also mean that currently non-compliant foreign insurers register for IPT.

Costs

The main impact on the administrative burdens baseline is likely to be through an increase in the number of companies on the IPT register. The number of additional foreign insurers that will register for IPT is not known, but some 700 foreign insurers are currently registered. If between 30 and 70 additional insurers register, the annual increase in the administrative burden baseline is estimated to be in the range £6,000 to £14,000. This estimate is based on HMRC's Standard Cost Model methodology. It takes account of the cost of registering and submitting IPT returns, the saving in the cost of seeking approval for a tax representative and the saving in the cost of notifying the cessation of being a tax representative.

An increase in the number of insurers on the register will increase the administrative costs of HMRC.

Benefits

Overseas insurers will benefit from no longer having to meet the cost of sourcing and funding joint and severally liable tax representatives. The costs of registration and of submitting returns will not be affected, and there may also be costs of using tax agents, but the use of tax representatives will no longer be obligatory.

The consultation failed to produce any information on the cost of appointing a joint and severally liable tax representative. Information is only available on the annual cost of a tax representative without joint and several liability, which is believed to average around £2,000. If the average cost saving to a registered foreign insurer through the removal of the requirement for a joint and severally liable tax representative is between £2,000 and £5,000, and 700 foreign insurers benefit from the saving, the total benefit is in the range £1.4m to £3.5m.

An improvement in compliance will have a favourable Exchequer effect.

Risks

There are no risks associated with the chosen option.

Consultation

Following the consultation, and the seminar which was held which had speakers from both HMRC and industry, HMRC have published a summary of responses document, setting out in detail the summary of responses received, and HMRC's response to these. This document can be found on the HMRC website.

Implementation Plan

Budget 2008 announced new legislation to remove the existing tax representative requirements for IPT, and to update HMRC's powers on recovery of tax from the insured party in the case of a non compliant non-EU insurer. The legislation will be enacted in Finance Bill 2008, with an implementation date of the date of Royal Assent. Draft guidance will be issued for consultation prior to any changes coming into force, and any consequential amendments to secondary legislation will also be made with an implementation date of Royal Assent. HMRC will contact all participants to the consultation document to ensure they are aware of the new rules, and to give them an opportunity to comment on the revised draft guidance. As the consultation responses included representatives from the insurance sector, advisors, and tax representatives themselves, this should ensure a wide coverage.

Small Firms

The removal of the requirement for foreign insurers to have a tax representative with joint and several liability does not affect small firms negatively.

Competition

The requirement to have a tax representative with joint and several liability may limit the number of foreign insurers writing business that covers UK risks. Accordingly, the removal of the requirement may have a favourable effect on competition, but the Government does not anticipate any material impact.

2. Removal of requirement to appoint tax representative for all EU insurers

This option was considered as part of the consultation exercise as an alternative option to the preferred option. It would have meant amending the current rules for EU insurers, but retaining the full tax representative provisions for non-EU insurers. Whilst this option could be justified on the basis that the Mutual Assistance provisions for recovery of debt would not apply to non-EU based insurers therefore there was the risk that the UK would not be able to recover any tax due from a non compliant non-EU insurer, it would have meant retaining, and indeed adding to, the tax legislation. As one of the stated objectives is to reduce rather than increase the regulatory and compliance burdens on businesses, this made this option unattractive. Further, as existing IPT legislation contains the power to assess the insured party for any tax due from a non compliant overseas insurer, this would enable HMRC to recover any tax due from a non-EU insurer, arguably making the full tax representative provision disproportionate for a non-EU insurer. Another point in favour of discounting this option was the additional complexity that would be required to target a very small trader population. There are only approximately 500 IPT registered non-EU insurers.

The law relating to liability of the insured party will be updated to ensure it is restricted to overseas businesses outside the EU who have no Mutual Assistance or similar provisions with

the UK. This ensures compliance with the EU treaty principles, provides security for the collection of the tax in the case of non compliance from non-EU insurers, in the simplest and least burdensome way.

3. Removal of joint and several liability requirement

It was clear from the responses to the consultation that the main element of appointing a tax representative which caused difficulties for overseas insurers was the requirement that the tax representative be jointly and severally liable with the insurer for compliance with the IPT rules and for the tax due. Questions were also raised as to the legality of the requirement for EU based insurers, given the provisions of the Mutual Assistance Directives on exchange of information and recovery of debt.

HMRC therefore considered the option of retention of the requirement to appoint a tax representative for all overseas insurers, but with the removal of the joint and several liability requirement.

HMRC have reviewed the Mutual Assistance provisions, along with the relevant ECJ case law – in particular the recent Belgian case (C-522/04 Commission v Belgium) which considered provisions which imposed personal liability for debts of others upon fiscal representatives, and whether these provisions contravened Treaty principles of freedom of establishment, and freedom to provide services. HMRC have concluded, that whilst the UK could support a reasonable argument for the imposition of the joint and several liability rule as proportionate measure to preserve the effectiveness of fiscal supervision, given the extension of the Mutual Assistance provisions to IPT there is no longer a requirement to retain this provision for EU based insurers.

This left the question as to what to do with non-EU based insurers who are not covered by such arrangements, and therefore unpaid tax by non compliant non-EU insurers was potentially at risk. We considered retaining a power to direct a joint and severally liable tax representative for these businesses, but concluded that there may be some limitations to HMRC's power to enforce any such direction given the restricted numbers of tax representatives in the market. Also, as IPT legislation contains the power to assess the insured party for any tax due by a non compliant overseas insurer, it was considered it was best to tackle any non compliance using this power.

The law relating to liability of the insured party will be updated to ensure it is restricted to overseas businesses outside the EU who have no Mutual Assistance or similar provisions with the UK. This ensures compliance with the EU treaty principles, provides security for the collection of the tax in the case of non compliance from non-EU insurers, in the simplest and least burdensome way.

4. Introduction of an IPT registration threshold

We have decided against introducing a registration threshold for IPT at this point in time.

There is currently no registration threshold for IPT. Any business writing taxable insurance risks in the UK is required to register for IPT. Part of the consultation asked for respondents' views on the possible introduction of an IPT registration threshold as a means of easing the administrative burdens encountered by insurers writing small amounts of UK insurance.

However, the responses to the consultation made it clear that a registration threshold was not a solution to the burdens incurred, and a reduction could be better achieved by alternative changes to the IPT system. Problems identified with a registration threshold included ongoing monitoring requirements, links with the current extra statutory de minimis concession, additional complications for co-insurance, and distortion of business.

Therefore, HMRC will consider further the possibility of taking forward some of the alternative suggestions put forward, as well as considering the use of the de minimis concession.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No