

## TAX COMPLIANCE IN THE EU: A THORNY ISSUE FOR CAPTIVE INSURERS

**The lack of a uniform EU Insurance Premium Tax code is a headache for captive insurers. Finding an efficient solution requires careful consideration, says Mike Stalley of FiscalReps.**

Insurance Premium Tax (IPT) is an often overlooked source of risk for captives and their parents.

Now that the tax benefits of self-insuring through offshore parties are generally eroded, the captive industry is largely dependent for its success on a high level of risk transfer and risk management expertise. The requirements of IPT payment in the EU complicate these processes and can be an unwelcome and time-consuming distraction for captives not adequately informed or prepared.

Complying with European Union IPT tax laws is an issue for all captives – and traditional insurers – insuring risks within the EU, regardless of where they are domiciled. This is because EU law determines liability for IPT according to Location of Risk.

The EU's Second Non-Life Directive defines the Location of Risk as the specific country where the insured risk is situated. This ensures consistency in risk assessment and avoids IPT being double taxed – each IPT payment can only be collected in the country where the risk is located. This directive is one area of IPT on which the EU has provided some uniformity.

This concept can be illustrated by the example of, say, a captive with a Dutch corporate parent insuring a factory in Spain: the captive must charge and collect IPT on the Spanish share of the premium and appoint a Spanish [tax representative](#) to act on its behalf with the authorities, paying and reporting IPT according to Spanish legislation.

Captives based within the EU (such as in Gibraltar or Malta), in Europe but outside the EU (Jersey), or in any other location (including Bermuda and the Cayman Islands) are all subject to these principles when insuring risk within EU countries.

However, there is no harmonised system of IPT settlement and collection within the EU itself – individual countries are free to decide how and whether to tax insurance premiums. Currently 21 of the 27 EU member states operate IPT regimes, but these vary widely in terms of business classes liable for such taxes and in terms of collection processes.

The complexity of EU IPT is therefore evident, and is deepened further by the 23 official languages and 13 different currencies used in the EU. A multinational corporation operating across several EU territories, perhaps moving its employees and goods from one location to another in the course of its business, can find itself subject to a plethora of national tax codes, practices and cultures.

Captives working within such organisations are often managed by independent insurers whose skills and know-how are focussed on risk, not tax. The potential for non-compliance with IPT regulation in such cases is considerable, and the reputational and financial consequences captives and their parents can suffer are serious. In 2001, the European Court of Justice set a precedent in [the Kvaerner case](#), giving national tax authorities the right to pursue buyers of insurance for premiums unpaid by their insurers. The pressure on captives to come up with complete and reliable solutions for IPT compliance is clearly significant.

The desire for financial and operational efficiency that drives most captives means that many now choose to [outsource](#) the management of IPT payments entirely. In addition to keeping captives' structures lean, this can bring greater transparency to the compliance process than has often been the case, and also reduces a web of multiple relationships to a single point of contact – a 'fire and forget' approach to IPT compliance that is rapidly gaining ground. Other captives may still choose to [manage](#) the situation directly, typically overseeing a network of local fiscal representatives in various EU states. In choosing between these options, it is important for the captive to decide the level of administrative involvement it desires and, for compliance purposes, to confirm that they will receive documented proof that taxes have [been](#) correctly calculated and paid.

IPT is a fact of life when managing risks in the EU, but should not exert undue influence on the commercial decisions taken. By finding the right solution for its needs, a captive can focus on its core task, confident that its tax compliance is assured.

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