

PRESS RELEASE

Us Government bent on closing tax havens and collecting transactional taxes

London, August 12, 2009 – Insurers globally need to be aware that the US is serious about closing tax havens and majorly ramping up its tax collection procedures, warns leading international tax compliance firm [FiscalReps](#).

The new Stop Tax Haven Abuse Act introduced in March is one example, set as it is to give the US Treasury the power to take 'special measures' against overseas jurisdictions and stiffen the penalties for 'tax haven promoters'.

“Insurers must understand that such measures are going to be increasingly on the US government’s radar, as evidenced by recent attacks on tax havens,” warns Chris James, FiscalReps’ chief executive. “As a result, insurers must ensure tax on both sides of the Atlantic gets properly calculated and accounted for – or the organisation will end up not fully compliant.”

A principal challenge for insurers and reinsurers exposed to the US is to understand and comply with Federal Excise Tax. Federal Excise Tax (‘FET’) applies to the premium paid by one foreign insurance company to another on contracts covering US risks. With the globalisation of the insurance market, such risks are often covered by non-US insurance companies through reinsurance contracts. A key principle is that the US considers FET applicable to multiple transactions in which the same underlying US risks are insured and reinsured: the US Internal Revenue Service (IRS) has stated that FET is due each time a US risk is reinsured or retroceded, even to a party affiliated with the cedant. As a result, some commentators refer to FET as a “cascading excise tax”.

“The complexity of ‘Cascading FET’ means there is ample scope for miscalculation,” James warns. “However, as the US government focuses more on revenue collection, global tax compliance *has* to be addressed by insurance businesses.”

Though such talk is not new, President Obama has signalled tougher proposals will find their way into law – a move that's already led insurance companies such as ACE, Flagstone and United America Indemnity to move from Bermuda (and Caymans) to Switzerland and Ireland.

Increasing attention is being focused on ways that overseas insurers can secure an exemption from FET. FET does not apply if the insurer is a qualified resident of a country that has a tax treaty with the US that includes an exemption from FET. Insurers that want to qualify for the exemption from FET typically enter into a closing agreement with the US IRS confirming that the non-US insurer qualifies under the relevant tax treaty. However, the definition of “qualified resident” is complex, and varies from treaty to treaty.

Underlining the complexity of this issue, the exemption from FET for UK-headquartered companies only applies to the extent that the assuming company does not reinsure with another company that does not qualify for tax treaty relief and if no conduit arrangement is found to be in place, so this is no amnesty from cascading FET.

Insurers are recommended to check each aspect of their possible exposure via trusted third-party advice.

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FOR FURTHER INFORMATION

Marc Cornelius
80:20 Communications
+44 (0)20 7664 6310
mcornelius@8020comms.com

Amanda Burgess
80:20 Communications
+44 (0)20 7664 6310
aburgess@8020comms.com

NOTES TO EDITORS

About FiscalReps

FiscalReps is an independent consultancy that helps insurance businesses to comply with Insurance Premium Tax and parafiscal taxes globally. The company is the European market leader, with a client list that includes many top insurers, brokers and corporate captive owners. Further information is available at www.fiscalreps.com.