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Dutch moves on IPT reflect European trend

While the legal requirement for insurers in Europe to have fiscal representation seems to be on the decline, Mike Stalley explains why the need for their presence could be great than ever.

The need for insurers to have fiscal representation across Europe appears to be on the decline. Insurance premium tax rates, conversely, are rising. Both of these trends are very significant, and, therefore, worth assessing in detail. Both trends are illustrated perfectly in the latest tax compliance news from the Netherlands.

Looking at fiscal representation first, the spirit of the European Union, pursuing 'freedom of services', naturally encourages a level playing field for insurers. The legal requirement for non-resident insurers to appoint a locally-based fiscal representative has long been cited as an unnecessary burden to tax compliance and the European Commission considers such a requirement to be in breach of EU competition legislation.

Single market principles

The principles of a single market demand that a UK-based insurer, for example, should be able to pay IPT in France without having to legally appoint a fiscal representative actually located in France. Those principles are becoming reality across Europe, with the Netherlands being the latest example.

The Dutch government's tax plan for 2011 decrees that the need for fiscal representation be abolished from 1 January 2011, but the trend started five years ago.

Increasing trend

Leading the way, the requirement for a Belgium-based fiscal representative was dropped in January 2006, as long as the insurer's head office was in the European Economic Area. In the UK, the equivalent requirement was abandoned in March 2009. France and Italy are among the countries to have now joined this group, and the trend clearly indicates that a requirement for fiscal representation will be increasingly less common across Europe in the months and years to come. The European Commission has formally requested that the Spanish tax authorities drop the requirement.

Insurers should not, however, be fooled into making a very expensive mistake by thinking tax compliance is becoming simpler. Although, legally, the need for fiscal representation across Europe is declining, the real need for expertise is actually increasing. Without sufficient internal IPT expertise an error with tax filing could face a high punishment. Ignorance is no excuse. If IPT is not calculated and paid correctly, the tax authorities are now far more likely than in previous years to condemn complacency and penalise firms.

Mistaken freedom

Acting without a fiscal representative when paying IPT, is therefore, not necessarily a great idea. The freedom to do so should not be mistaken for the obligation to do so. The retention of a specialist tax agent to support IPT processes could 'insure' firms against costly compliance errors.

As the IPT compliance mechanism becomes more relaxed, national tax authorities across Europe are becoming more determined and less forgiving. The pressure on these authorities to bring in as much money as possible has steadily intensified over the past two years, not least because governments are seeking to protect and steady themselves in the recession and 'Euro zone' crisis.

Vigilant enforcers

The Netherlands and Germany are the most vigilant IPT enforcers, regularly initiating tax inspections. Other European tax authorities could naturally follow any lead that proves successful in securing additional income from IPT. Avoidance, whether by accident or design, is likely to be punished. Equally, insurers that make a mistake with IPT accounting in the future should expect a penalty rather than a frown and a warning.

One further consequence of the increased focus on IPT among Europe's national tax authorities is a sharp increase in the number of IPT rate rises in the past year. Again, the Netherlands provides the latest proof of this trend.

Pressure impact

Initially, the Dutch government intended to increase IPT from 7.5% to 9.5% on 1 January 2011. However, because of pressure from the insurance industry regarding the short timescale before implementation, the increase was postponed.

The IPT rate in the Netherlands will, therefore, increase from 7.5% to 9.7% from 1 March 2011 and will then be reduced back to 9.5% from 1 January 2015. The Dutch Treasury believes this revised schedule will allow the government to recoup the estimated €80m lost during January and February 2011.

Repairing public purse

Governments across Europe are focusing on IPT as a means of repairing public finances. There have been more IPT increases announced in the past 12 months than in the previous two years combined. Ireland, for example, increased the country's IPT rate to 3% in late 2009 and Finland's IPT rate rose to 23% (from 22%) in 2010. In 2011 the UK rates (standard rate up from 5% to 6% and higher rate up from 17.5% to 20%) will increase, and Bulgaria will introduce IPT for the first time. Many governments clearly see IPT as an under-exploited revenue source.

Such frequent rate changes make it more difficult for insurers to stay tax-compliant internationally - a particular concern when, as discussed, tax authorities are arguably pursuing IPT revenues more aggressively than ever before.

Fiscal dilemma

The market is undoubtedly experiencing fascinating times in European IPT, and there will be many dilemmas for insurers as the long-established compliance mechanism for fiscal representation unwinds. Any insurer is perfectly entitled to calculate and pay IPT without fiscal representation in the Netherlands, or in any other European nation where the legal freedom exists.

There are, however, many demands in maintaining a comprehensive understanding of the still-complex and regularly-changing IPT regulations of multiple countries. Before rejecting the notion of fiscal representation, insurers must be certain that their internal resources are ready for the challenge.

Mike Stalley is founder and chief executive officer of Fiscal Reps.