

# Premium Splitting: Homeserve v HMRC

The Homeserve case considered the artificial unbundling of premium to remove it from the scope of IPT. The tribunal, initially won by HMRC went to appeal and the decision was overturned. In response, new legislation was introduced to close this loophole.

Acting as an insurance intermediary, Homeserve Ltd arranged an assortment of insurance products covering various household utilities such as the plumbing, drainage and heating systems. The policies promised the policyholder an emergency engineer callout service and cover for the cost of repairs.

On purchasing a policy, the policyholder entered into two separate contracts, one with Homeserve and one with the insurer, a point the marketing and insurance documentation highlighted to the customer. The insurer provided the cover and contracted a third party claims handler. Homeserve's duties were to arrange and administer the policies, including collecting premiums, administering renewals and dealing with complaints.

The documentation also highlighted to the policyholder the cost of the contract with Homeserve was £14 and was included within the £59.99 cost of the whole product, including the premium.

Homeserve collected the total £59.99 from the policyholder, retained the £14 and remitted the balance to the insurer. IPT was due on the premium, but the case considered this "unbundling" of services from the premium and whether IPT should be due on the administration fee that Homeserve retained.

## UK Legislation

The primary UK IPT legislation is found in Finance Act 1994 (as amended). Under the Act, IPT is due on the receipt of a premium by an insurer or broker. Section 72(1) of the Act defines a premium as "any payment received under the contract by the insurer", including, amongst other items, payments relating to "the cover for any risk" and "costs of administration".

However, section 72(1A) removes from this definition any premium "charged under a separate contract and is identified in writing to the insured as a separate amount so charged". As such, Homeserve argued that the £14 administration fee should not be subject to IPT.

HMRC took the view that, at most, there was a tripartite contract between the policyholder, Homeserve and the insurer, and that there was most likely no contract between Homeserve and the policyholder.

## The Decision

The Tribunal agreed with HMRC that even though the separate contracts were disclosed to the policyholder, the payment received by Homeserve was not sufficiently distant from the insurance and so subject to IPT.

In owing the policyholder several contractual duties, Homeserve was clearly not just acting as the insurers agent. However, in the context of IPT, the two contracts were not "separate contracts". The tribunal found that the phrase "separate contract" in the legislation was intended to mean an independent and separable contract. In this instance, the administration contract was not a standalone contract and was dependent on the contract of insurance being in place. In other words, the customer would never take out the insurance contract without the administration contract and vice-versa. Furthermore, the price quoted to the customer was a single price, despite the contracts identifying that £14 was in relation to the administration contract.

## The Appeal

Homeserve appealed the decision and the case was taken to the High Court. There was no dispute that a contract existed between the

policyholder and Homeserve; instead the issue was whether the contract constituted a separate contract for the purposes of IPT. The appeal was successful and it was held that the £14 administration fee should not be subject to IPT.

The judge found that the tribunal should not have given special meaning to the term “separate contract”. Instead the term merely means a contract that is not the same as the contract of insurance. Whether or not the administration contract could be taken out independently of the contract of insurance was not a condition of it being separate. The judge found it irrelevant that the price was quoted to the customer as a single amount and that the administration contract was depend upon the formation of the contract of insurance.

In fact, the legislation even takes into account that two contracts may be linked. Section 72(1A) states that an amount “charged to the insured by any person in connection with a taxable insurance contract” is considered to be part of the premium unless it is under a separate contract.

## Outcome

HMRC did not appeal this decision. However, HMRC’s view remained that fees being artificially carved out from the normally taxable premium should be subject to IPT. As such, the 2009 pre-budget report announced the introduction, with immediate effect, of new legislation that would bring such administration fees within the scope of IPT. This was seen as over punitive measure and could bring many broker fees into taxation. The actual budget saw the scope of this provision being reduced to only include “commoditised” insurance, meeting 4 conditions, including that the amount being charged for any services under the contract or the terms on which they are provided are not open for negotiation, and that the premium for the insurance is fixed without any comprehensive assessment of the individual’s circumstances.

The new legislation does not apply to insurance bought by businesses, as avoidance has not been seen in this area, though HMRC are monitoring the situation. The new legislation provides for the scope to be extended should there be evidence of the avoidance moving to other areas.

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With qualified professionals in the areas of finance and insurance, and with extensive experience gained both in the London market and internationally, **FiscalReps** is able to harness technical skills and market experience to deliver a robust but common-sense IPT compliance solution.

**FiscalReps** offer a suite of products encompassing Outsourcing, Technology, Consulting and Training solutions to assist clients in achieving and maintaining global compliance.

**Mike Stalley** FCA, Chief Executive, founded **FiscalReps** in 2003 after experiencing at first hand the difficulties involved in achieving international premium tax compliance.

To find out how **FiscalReps** can give you certainty surrounding your organisation’s IPT compliance obligations, please contact us.

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