

VAT & IPT issues for brokers and insurers

There are currently a number of VAT and IPT issues that affect the insurance market and can lead to unexpected liabilities and/or administration costs. Some are time sensitive, others long term. This bulletin sets out the more important issues and is designed to help you identify potential problems and minimise risk.

VAT rate increase 4 January 2011

A reminder that the VAT rate increased to 20% on 4 January 2011 (the corresponding higher rate of IPT likewise increased to 20% on 4 January 2011). Anti-forestalling measures were put in place to prevent businesses from manipulating the tax point, which determines which rate applies, to gain an unfair advantage. Points to remember are:

1. You were not permitted to prepay or receive advance invoices for supplies of goods or services to take place on or after 4 January 2011 to/from "connected persons", e.g. associated companies.
2. You were not permitted to arrange for a supplier to pre-invoice for goods and services where payment was delayed by six months or more.
3. You could pre-pay or arrange for supplies to be pre-invoiced where the supply was not more than £100,000. Pre-payment and pre-invoicing over £100,000 was acceptable where it is the supplier's normal practice to pre-invoice or receive pre-payments. The supplier cannot provide or arrange funding to enable you to pay in advance.
4. Goods and services genuinely supplied before 4 January can be at the 17.5% rate even though invoiced on or after 4 January 2011. **The supplier will have the choice of which VAT rate to apply so check your purchase invoices – the VAT can be adjusted if the 20% rate is used when 17.5% can apply!**
5. Services in progress spanning 4 January 2011 can be apportioned such that work carried out prior to 4 January 2011 will attract the 17.5% rate and work carried out on or after 4 January 2011 will attract the 20% rate. Again, check your purchase invoices.

If you need further advice on how the rate change will affect your business, contact Bob Jones (020 7516 2295, rjones@littlejohnllp.com) or Luigi Lungarella (020 7516 2228, llungarella@littlejohnllp.com).

VAT and outsourced insurance services

It was believed that the EU would restrict the scope of the insurance exemption so that outsourced services such as claims handling, debt collection, accounting etc. will become subject to VAT, even when sourced from abroad, as the reverse charge rules would apply.

The European Commission has been carrying out a review of the scope of the exemption from VAT available to insurance services and other exempt supplies. The UK Government has argued an expansive view should be taken, but most other EU member states favour a more restrictive approach. An early indication of the way forward was given by the European Court of Justice ("ECJ") in 2005 in the Andersen Consulting decision where the provision of "back office" services, which included issuing, managing and cancelling policies, were not exempt insurance services as Andersen Consulting did not have freedom to choose the insurer used, i.e. a broker, or an insurance intermediary introducing the insured to the insurer.

The situation was further clarified by the ECJ under its new name, the Court of Justice of the EU, in Axa "Denplan" where it ruled that the service of handling payments from patients and dentists under a dental insurance scheme is subject to VAT.

However, the EU has backed down on making changes to the scope of the exemptions and it will be down to member states to interpret the existing legislation and case law. The UK has deferred fully implementing the Andersen Consulting decision pending the EU review of VAT exemptions. It is possible that changes to the scope of the insurance exemption will be implemented in the next year or two, but for the time being no significant changes are anticipated.

For further information on the impact this is likely to have on your business, contact Bob Jones (020 7516 2295, rjones@littlejohnllp.com) or Luigi Lungarella (020 7516 2228, llungarella@littlejohnllp.com).

Some key items you may wish to consider are summarised below:



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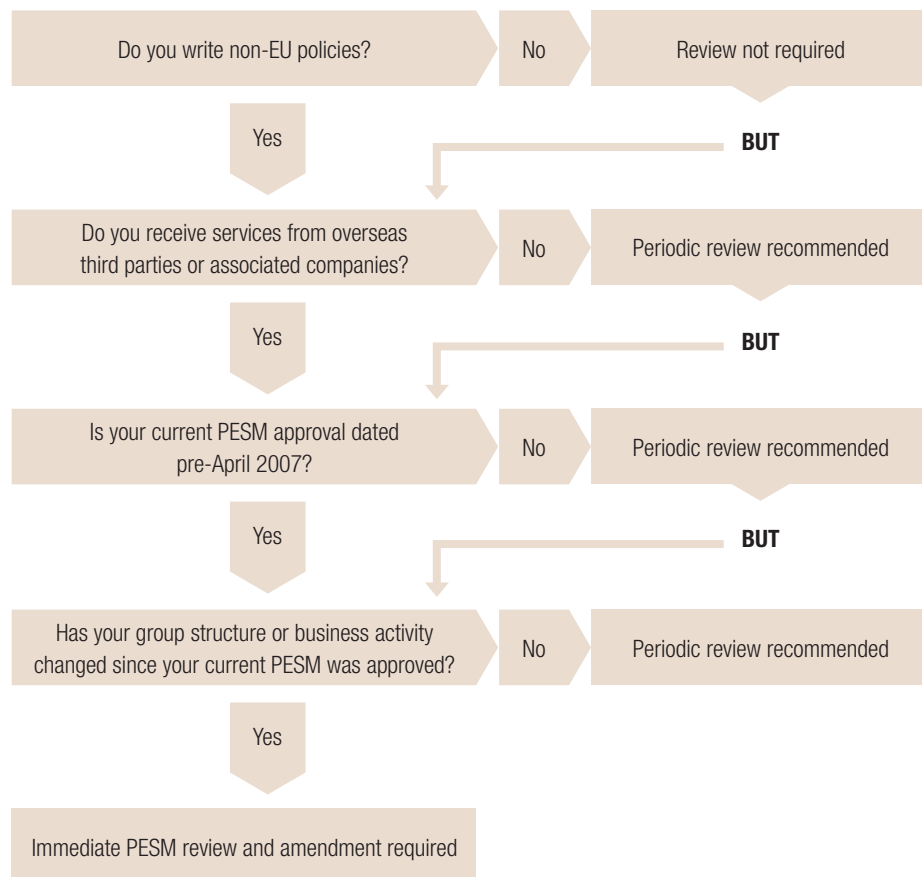
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Partial Exemption Special Methods (PESM)

In 2007 HMRC tightened up the partial exemption regulations making it essential that insurers, brokers and other intermediaries ensure their PESH, if applicable, is up-to-date. There are a number of factors that could affect whether you need to review, and formally amend, your PESH and the increase in the rate of VAT to 20% will make a review even more important. An out-of-date PESH can cost you time and money in terms of costly negotiations

with HMRC and unforeseen liabilities, but by updating your PESH you may be able to recover significant amounts of VAT. Once you have updated your PESH you must review it regularly to ensure it remains up to date.

Littlejohn has helped a number of clients re-negotiate their PESH, avoiding lengthy and costly negotiations with HMRC and, in many cases, improving the overall recovery of VAT on expenditure.



The decision tree above is for guidance only and should not be considered to be definitive advice.

IPT rate increase

You will be aware the standard rate of IPT increased to 6% on 4 January 2011 with further increases possible in the future. HMRC declined to implement the discretionary 6 month transitional period whereby policies incepting before 22 June 2010 (when the increase was announced) with premium due dates on or after 4 January 2011, would still attract IPT at 5% until 4 June 2011. This will mean that for some policies the insured will pay 5% after 4 January 2011 but the insurer will be required to account for 6% to HMRC.

If you have issued policies with an inception date before 4 January 2011 and a premium due date on or after 4 January 2011 the 6% rate will apply to the due dates falling on or after 4 January 2011; premium due dates before 4 January 2011 will continue to attract the 5% rate. This will be particularly relevant to annual policies raised before 22 June 2010, e.g. motor, with premium due dates on or after 4 January 2011. The premium due date is the date payment is due as stipulated in the insurer's accounts, the so-called "written premium" basis of accounting for IPT used by most insurers, and is not affected by credit payment terms. There is an alternative method of accounting for IPT, the "cash receipt" basis, but this method is rarely used due to accounting difficulties.

Anti-forestalling measures were introduced to prevent premium being written or received before 4 January 2011 where the policy covers a period after that date. Brokers need to pay attention to these rules to ensure the correct rate is applied between 22 June 2010 and 4 January 2011.

If you need further advice on how the rate change will affect your business, contact Bob Jones (020 7516 2295, rjones@littlejohnllp.com) or Luigi Lungarella (020 7516 2228, llungarella@littlejohnllp.com).

IPT compliance

IPT is a global issue with almost every country in the world applying IPT or similar taxes to premium relating to risk located in their jurisdiction. The rates and rules vary considerably, along with the person responsible for accounting for the IPT, be it insurer, broker or insured. There are consequences for failing to account for IPT with tax authorities able to apply penalties, interest and, in extreme cases, deeming policies void. There are also regulatory and reputational issues to consider.

Tax authorities worldwide are beginning to wake up to IPT non-compliance with countries such as Germany, Belgium, Austria, Canada, and South Korea focussing on multi-national insurers. In all jurisdictions, collecting and failing to account for IPT is an offence and therefore brokers and insurers have an obligation to ensure IPT compliance in every jurisdiction in which they operate.

Littlejohn provides a cost effective worldwide IPT compliance and consultancy service to a number of insurers with the assistance of our international association, Polaris International. For further information contact Bob Jones (020 7516 2295, rjones@littlejohnllp.com) or Luigi Lungarella (020 7516 2228, llungarella@littlejohnllp.com).

IPT premium splitting

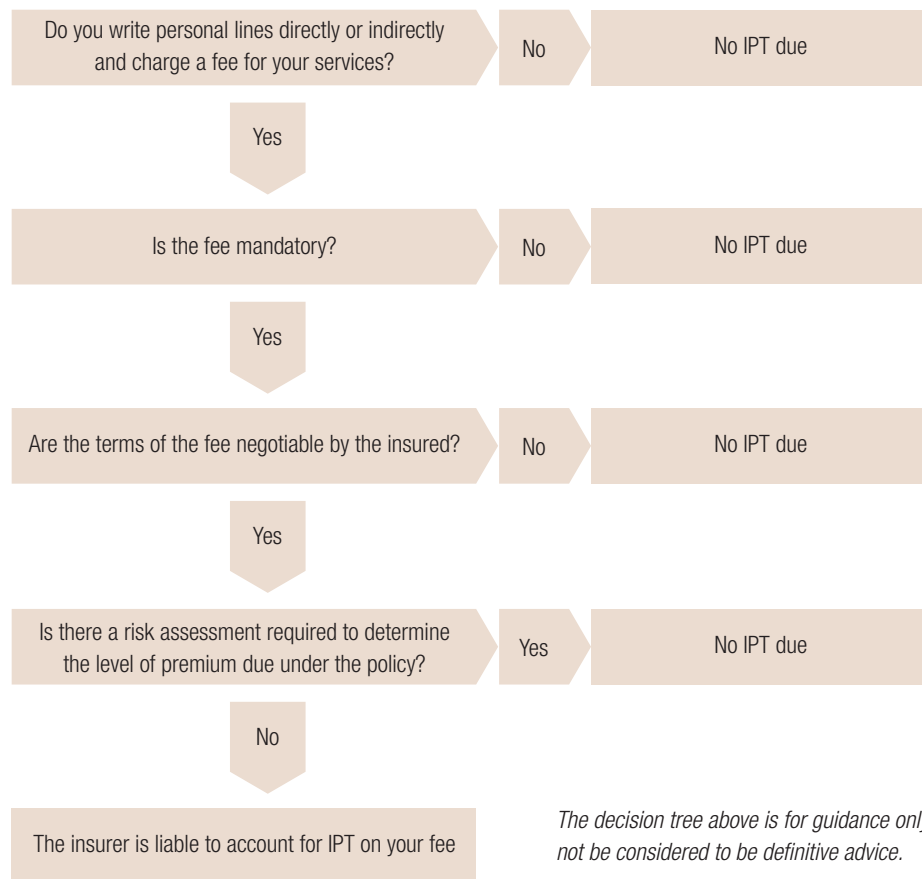
HMRC has introduced anti-avoidance measures targeted at brokers entering into separate "arrangement fee" relationships with private individual insureds, i.e. members of the public. The decision tree on the back page will help you determine if you are affected and whether IPT, **payable by the insurer**, is due on your fees.

If the conclusion is that IPT is due on arrangement fees then it is the broker's responsibility to report the IPT liability to the insurer to enable the insurer to account for the IPT due to HMRC.

If you are unsure of your position regarding premium splitting Littlejohn will be able to help you assess and manage your risk. Contact Bob Jones (020 7516 2295, rjones@littlejohnllp.com) or Luigi Lungarella (020 7516 2228, llungarella@littlejohnllp.com).

"Littlejohn provides a cost efficient worldwide IPT compliance and consultancy service to a number of insurers."

IPT premium splitting continued



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Relocation

Have you, or are you about to, move to new leased premises? If so there are a number of considerations that could affect you:

- VAT – If you carry out work on behalf of the landlord when carrying out your own fit-out work you need to consider the VAT position very carefully as you will be deemed to be supplying building services to the landlord.
- PAYE – If you carry out work for the landlord you may be required to register with HMRC under the Construction Industry Scheme (CIS) for PAYE withholding tax purposes as you will technically be a subcontract builder.

- Capital Allowances – Refurbishment or fitting out expense items need to be carefully reviewed and categorised to maximise savings and minimise HMRC enquiries.
- Capital Gains Tax – Issues might arise on the disposal of any interest in your old property. The impact of roll-over relief on “wasting assets” also needs consideration.

Littlejohn's tax team has helped a number of clients with these issues resulting in significant VAT and direct tax savings by ensuring the correct treatment is applied while minimising the administration cost of dealing with lengthy HMRC enquiries. Contact Bob Jones (020 7516 2295, rjones@littlejohnllp.com) or Chris Riley (020 7516 2427, criley@littlejohnllp.com).

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