

WRITTEN BY KAREN JENNER

## NON-EU IN THE EU

18 FEBRUARY 2015

Karen Jenner, of FiscalReps, speaks to Captive Review about the hurdles surrounding premium tax compliance for insurers and captives domiciled in Guernsey.

Guernsey as a domicile for captives has many advantages for EU-based corporates, not to mention the island's beauty and its proximity to the UK and mainland Europe.

However, despite its location in Europe, non-EU membership and the subsequent inability to passport insurance business across the EU brings unique challenges for direct writing opportunities, along with premium tax compliance hurdles. As we are constantly aware in the world of premium taxes and para-fiscal charges, the interpretation of EU legislation can vary across EU member states.

The 1st Non-Life Insurance Directive (73/239/EEC) defines the 18 classes of non-life insurance, but interpretation by each territory as to where business falls within these classifications can vary. To add to confusion, in several EU countries IPT legislation was written many years prior to the issuance of the directive.

In Belgium alone FiscalReps have sub-classified these 18 classes into more than 150 for the purposes of accurately coding products and subsequently calculating premium tax and para-fiscal charges for their clients in this country.

An interesting complication arising from the varying approaches is with regard to the treatment of stock. The EY classification doesn't determine the length of time stock is to be static in a warehouse before it becomes 'property' (classes 8 and 9) versus 'goods in transit' (class 7).

In Belgium after only two days in a warehouse the stock can be classified as classes 8 and 9, whereas in France the stock can be warehoused for up to two months under class 7. Looking at the 2nd Non-Life Insurance Directive (88/357/EEC) article 2(d) – Location of Risk Rules – interpretation of 'vehicles of any type' can also vary across member states. In the UK for example, the literal interpretation of vehicle is at its widest; on the contrary in Malta, in line with the view of the EU Commission, the interpretation of vehicles is restricted to motor vehicles only.

The same directive and article can cause additional confusion when considering where the vehicle is 'registered' for defining where premium taxes and para-fiscal charges are due. The most common example of an exception to the rule is in Germany, where an official register is maintained listing all marine vessels operating out of German ports. The German tax authorities deem this register to determine that any vessels operating out of their ports are subject to German premium tax. In effect, a vessel registered within the UK but operating out of German ports could be subject to double taxation, due to the two countries different interpretation of the directive's 'location of risk' rules.

If these nuances provide premium tax filing and settlement challenges to EU-based insurers writing EU-based risk, the challenges can only increase for Guernsey, or other non-EU jurisdictions looking to ensure premium tax compliance, with the added regulatory issues and whether they are physically able to even register with EU premium tax authorities.

Leaving aside the regulatory issues involved on cross-border transactions – these are issues for the lawyers to ponder – it will be no surprise to hear that the approach of each tax authority to premium tax settlement from non-admitted insurance varies from one EU member state to the next. Non-EU-based insurers successfully register with HMRC and file ongoing IPT in the UK, and similar success is regularly evidenced in the Netherlands.

Non-EU-based captive insurers may be able to take advantage of the locally based policyholder to file premium taxes on their behalf in Germany. Other EU member states will not even consider the registration of non-EU entities as taxpayers. Authorities may also take a different view on ongoing compliance by non-EU insurers, to regularisation of a historical position for the insurer looking to seek compliance. One distinct advantage to Guernsey insurers not being part of the EU must not be overlooked. As a VAT system does not exist in Guernsey, and with a recent proposal to introduce one being voted out, certain claims costs incurred by the insurer will be VAT free.

## Outside the EU

Moving outside of the EU, Guernsey captive insurers find themselves in an equal position to those captives domiciled within the EU. In the ongoing desire for global compliance, solutions are being sought to deal with 'difference in conditions/difference in limits' ('DIC-DIL') covers and other non-admitted coverages underwritten by captives.

The US and Canada both offer opportunities for local policyholders to file and settle premium taxes and charges on behalf of their captive insurers. Complexities in these territories arise with the differing rules and requirements on a state-by-state basis in addition to the potential FET obligations. As Guernsey is not party to the UK Tax Treaty with the US, FET of 4% would apply to insurance premiums written on a direct basis by a Guernsey domiciled captive, or 1% of reinsurance premiums.

Moving into Latin America, and again leaving regulatory issues to our colleagues in the legal profession, in Chile there may be opportunities for a local insured to file and settle withholding tax on premiums on behalf of its offshore captive insurer; similarly in Peru for Income Tax and IGV Sales Taxes, and in Colombia for IVA Sales Tax. Legislation in these territories was designed for the domestic market rather than global non-admitted insurance. In any of these particular instances, it appears that all insurance activity and premium transactions should take place offshore.

Looking to Asia, captives writing Singapore-based risk on a non-admitted basis have an added advantage over local insurance companies, in that the 7% local GST is not applicable where the premium transaction is offshore. In Australia local insureds can file and settle relevant charges on behalf of their captive insurer. In addition to the varying state taxes and parafiscal charges in some states to fund fire and emergency services, the captive insurer needs to be mindful of the additional 3% Federal Income Tax deducted from premiums paid to non-admitted insurers.

In conclusion, it would appear that there are premium tax compliance issues aside from regulatory challenges for all captive insurers writing cross border business – albeit those challenges may differ slightly depending on whether the captive is based within or outside EU member states. Comprehending and appreciating the issues as well as staying on top of ongoing developments is key to the successful and ongoing compliance of any captive insurer.

An original version of this article was published [Captive Review's](#) 2015 Guernsey report, February 2015.

WE ARE GUERNSEY is the brand under which Guernsey Finance promotes the island's financial services sector internationally. Guernsey Finance - the promotional agency for the island's finance industry internationally - is a joint industry and Government initiative responsible for the promotion of Guernsey. Under the leadership of Chief Executive Rupert Pleasant, the agency ensures that the core values and competencies of the island's finance sector are accepted and respected by the global community and that financial business development flows are enhanced.

PO Box 655, St Peter Port,  
Guernsey, GY1 3PN

+44 (0)1481 720071

[INFO@WEAREGUERNSEY.COM](mailto:INFO@WEAREGUERNSEY.COM)

