

FROM: International Tax Manager
LOCATION: 86/441
EXTENSION: 6860
DATE: 13 December 2001
REFERENCE: TAX/MCM/ln/Y2665
SUBJECT: **AUSTRALIA – INSURANCE PROTECTION TAX**
ATTACHMENTS: Appendix 1
ACTION POINTS: **Underwriters and brokers to note and follow new procedures**
DEADLINE: **Now**

1. Introduction

- 1.1 My market bulletin dated 21 September 2001 [Y2614] informed you that the introduction of the new Insurance Protection Tax in New South Wales (NSW), Australia had been delayed. This was to allow the NSW Government, in conjunction with the Insurance Council of Australia, to consider alternative ways of financing the NSW Policyholders Protection Fund. Unfortunately it has not been possible to agree another method and the tax assessed for the year to 30 June 2002 will now be collected.
- 1.2 This bulletin sets out the arrangements that are being made to comply with the tax.

2. Description

- 2.1 The Insurance Premium Tax is due on insurance premiums covering real property, fixtures or buildings located in NSW and other risks, contingencies or events which may occur within, or partly within, NSW. Reinsurance is exempt. This definition is virtually the same one that is used for NSW stamp duty.

The tax is due on the gross premium including GST and fire services levy and before the 3% tax is withheld but without the addition of stamp duty.

- 2.2 The New South Wales Office of State Revenue (OSR) has agreed that Lloyd's can make one return on behalf of all Underwriters to cover all NSW business, including open market as well as coverholder business.
- 2.3 The tax bill for the entire insurance industry for the year to 30 June 2002 is \$65,000,000, payable in quarterly instalments and it has been apportioned between insurers according to their share of total NSW premiums for the year to 30 June 2001. The first two instalments are due for payment on 17 December 2001 and the third and fourth instalments are due on 15 March and 17 June 2002.
- 2.4 The OSR have asked Lloyd's to pay \$567,629.28 on 17 December 2001. The payment relates only to business written under binding authorities held by Australian coverholders. The OSR have not included other Australian business and they will therefore need to recalculate the tax and adjust the payments due on 15 March and 17 June 2002. You will be advised when the revised calculation is received.

The tax due on 17 December will be collected from syndicates on Friday 14 December 2001 and the collection will be made in sterling.

3. Recording NSW premiums

- 3.1 The tax for the year to 30 June 2002 is based on the insurer's premium income for the previous year ended 30 June 2001. As NSW premiums are not allocated a separate FIL code the tax has been based on an estimate of open market premiums extracted from LPSO records and on returns of premium income for binding authority business made by Australian coverholders to Keith Stern, Lloyd's General Representative in Australia.
- 3.2 In future the Central Taxes System (CTS) will be used to record NSW premiums. The CTS is described in a market bulletin dated 8 August 2001 (Y2594) and the placing and closing procedures set out in Appendix 1 should be followed to allow NSW premiums to be recorded. However, the LPAN should show the gross premium as defined in 2.1. Please note that if the premium covers NSW and non-NSW business it must be apportioned and the NSW element identified, although it will not be necessary to provide separate LPANs to do this.
- 3.3 In order to ensure an orderly transition to the new system the implementation date is linked to the date of the document/advice used to report premiums to London by the Australian coverholder or broker. All NSW premiums reported in advices dated **on or after 1 January 2002** will be recorded in the CTS. Australian brokers have therefore been asked, with effect from 1 January 2002, to clearly identify NSW premiums on documentation that they send to Lloyd's brokers. The Lloyd's broker should then include this information when they close the premiums to LPSO. Particular care should be taken to identify NSW declarations from binding authorities.
- 3.4 I attach for your information copies of the letters that Keith Stern has sent to Australian brokers and coverholders about the new procedures.

4. Readership and contact details

4.1 This bulletin is being sent to underwriters, Lloyd's brokers and recognised auditors.

4.2 If there are any queries please contact Roger Ramage on Lloyd's extension 6852 (e.mail: roger.e.ramage@lloyds.com) or Maureen McLeod on Lloyd's extension 6860 (e.mail: maureen.c.mcleod@lloyds.com).

Maureen McLeod
Taxation Department

December 2001

Doc no: SYDCB\003676462v1.doc

Name
Job Title
Company
Address

Dear

Insurance Protection Tax

As I am sure that many of you are now aware, the NSW Government has introduced a tax, the Insurance Protection Tax ("IPT") in order to fund compensation payments to certain HIH policyholders. This is a tax payable by insurers and some insureds (in limited circumstances).

What do you need to do?

- 1. Have regard to the new process for reporting to Lloyd's which will operate in relation to all advices made on or after 1 January 2002**
- 2. Make sure that you have correctly responded to a recent questionnaire that you may have received from the Office of State Revenue.**
- 3. If you act for foreign insurers other than Lloyd's and at least one of those insurers is not registered to carry on an insurance business under the *Insurance Act 1973*, consider whether you are going to collect tax, on behalf of the insureds, from NSW premiums paid to those insurers. You must obtain your own advice in relation to this matter.**

1 Introduction

The collection of the first instalments of this tax from insurers have been held in abeyance for several months while the Insurance Council tried to develop an alternative means of funding the NSW Government's liabilities upon the collapse of HIH. However, it seems that this process has now stalled. Major amendments to the legislation imposing the tax (which are now law) have also been made since the tax was first introduced.

I have outlined below the general operation of the IPT, as amended.

Whilst the IPT is payable by Lloyd's Underwriters, it is anticipated that we will need to collect information from you, as part of your normal reporting to London, to assist us in meeting these obligations. The information that we will need is also outlined below.

2 What is the IPT?

The IPT is a tax calculated by reference to the annual premiums received by insurers for general insurance relating to property and risks located in New South Wales (referred to hereafter as "NSW premiums"), with certain specific exclusions, such as reinsurance. The NSW Government aims to collect \$69 million p.a. with this tax. It is anticipated that this tax will be with us for at least three years, with the Government to review whether there is still a need for the tax at that time.

Importantly, we are informed that the fundamental objective is to tax insurers, rather than insureds, (although through the recent amendments, there will be 1% tax imposed upon insureds with NSW premiums being paid to unregistered foreign insurers). Legal advice has been obtained by the Insurance Council of Australia (“ICA”) that an insurer is liable to prosecution if any amounts directly attributable to the IPT are passed on to insureds. We also understand that that ICA has received legal advice that the IPT is constitutionally valid.

3 How is the tax levied ?

\$65M of the annual tax burden is to be apportioned amongst insurers according to each insurer’s share of the total NSW premiums for all insurers in the previous year. In order to determine the liability of individual insurers, all insurers are required to lodge a return by 15 August of each year, disclosing the NSW premiums earned in the preceding financial year ended 30 June.

The Chief Commissioner of State Revenue (“the Commissioner”) will then make an assessment of the tax payable by each insurer. The tax is payable by quarterly instalments. The first two instalments will now be payable by Lloyd’s Underwriters on 17 December 2001.

It is anticipated that the remaining \$4M of the annual tax burden will be collected by the imposition of a 1% tax upon insureds where they take out insurance with an insurer who is not registered to carry on business in Australia under the Commonwealth *Insurance Act 1973*. **Lloyd’s Underwriters are registered under that legislation. Therefore, the 1% tax will not be imposed upon insureds taking out policies with Lloyd’s.**

4 Who is liable for the tax?

4.1 Insurers

Under the original IPT legislation, the liability for the IPT was upon both the person writing insurance (i.e. Lloyd’s Underwriters) and a person who received NSW premiums on behalf of an entity outside of NSW that wrote general insurance (i.e. coverholders and brokers receiving NSW premiums on behalf of Lloyd’s Underwriters). The latter part of the definition of “insurer” also seemed to extend to agents outside NSW receiving NSW premiums on behalf of Lloyd’s Underwriters.

The recent amendments to the legislation overcome the problem under the original legislation which disadvantaged insurers located outside NSW by potentially double counting their NSW premiums in arriving at the IPT attributable to them individually and to their intermediaries. Thus, under the amended legislation, only Lloyd’s Underwriters will have a liability to IPT, and not coverholders and brokers receiving NSW premiums on behalf of Lloyd’s Underwriters.

4.2 Insured Persons

Initially the legislation placed the liability for IPT in relation to NSW premiums for insurers outside NSW on the broker/agent receiving the premiums on behalf of the insurer. Under the amended legislation there is no primary liability upon intermediaries such as brokers. The primary liability falls upon the insurer if the insurer is registered under the Commonwealth *Insurance Act 1973*, or the insured if the insurer is not so registered.

This amendment will apply to insureds who obtain, effect or renew any general insurance with an unregistered insurer from **29 November 2001**.

Where an insured has a liability for this tax, it must be remitted to the NSW Office of State Revenue (“OSR”) by the 21st of the month following the month in which the premium is paid by the insured.

We understand that brokers will be able to act as collection agents for the IPT and collect tax from insureds for remission to the OSR as agent for the insured on a monthly basis. We understand that the collection mechanism will be similar to that which currently exists for stamp duty. Further information should be provided to you directly by NIBA shortly.

Please remember that as Lloyd’s Underwriters are registered under the Commonwealth Insurance Act 1973, you will not need to collect 1% tax from insureds for business written with Lloyd’s. You will, however, need to report to Lloyd’s the NSW components of any premiums for business written for Lloyd’s so that Lloyd’s Underwriters can meet their IPT obligations.

5 Registration

You may have received a letter from the OSR recently enclosing a Confirmation of Information questionnaire. As you are not registered as an insurer under the *Insurance Act 1973*, you should answer “NO” to the first question and there should be no need for you to lodge a return with the Office of State Revenue disclosing premiums for the 2000/2001 year.

6 What numbers do we need from you?

London LPSO will pick up, in a new system, any NSW premium income advised to London by an Australian broker in a document (be it a fax, email or bordereaux) dated **on or after 1 January 2002**. Thus, in any advices dated on or after 1 January 2002, you will need to show the amount of NSW premiums.

NSW premiums for the purpose of this reporting to London will be very similar to the premiums that are liable to NSW stamp duty. Most of the information that we will require should therefore be able to be picked up from your periodic stamp duty returns. You should note that the premiums will need to be inclusive of GST (if applicable) and fire services levy but exclusive of stamp duty and should be shown prior to any income tax withholding. As with stamp duty, reinsurance premiums should be excluded from the IPT premiums.

Further, where you have entered into co-insurance arrangements in relation to NSW business, we only need to know the share of the relevant premiums attributable to Lloyd’s Underwriters.

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We will keep you informed as further information comes to hand. In the interim, if I can be of any assistance, please do not hesitate to contact me on (02) 9223 1433.

Yours sincerely

Keith Stern
Lloyd’s General Representative in Australia

December 2001

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Name
Job Title
Company
Address

Dear....

Insurance Protection Tax

As I outlined to you in my letter of 25 July 2001 (see copy attached), the NSW Government has introduced a tax, the Insurance Protection Tax ("IPT") in order to fund compensation payments to certain HIH policyholders. This is a tax payable by insurers and some insureds (in limited circumstances). Amendments to the legislation imposing the tax are now law.

The purpose of this letter is to outline the changes made by those amendments and their implications for you.

What do you need to do?

1. **Complete and return by 15 February 2002 the attached questionnaire in relation to NSW premiums. You should include in the questionnaire NSW premiums for the period beginning where you cut-off in replying to the previous questionnaire and ending with the last premiums reported to London by you in a document dated immediately prior to 1 January 2002. *This is the last time that you will need to respond to such a questionnaire.***
2. **Have regard to the new process for reporting to Lloyd's which will operate in relation to all advices made on or after 1 January 2002**
3. **Make sure that you have correctly responded to a recent questionnaire that you may have received from the Office of State Revenue.**
4. **If you act for foreign insurers other than Lloyd's and at least one of those insurers is not registered to carry on an insurance business under the *Insurance Act 1973*, consider whether you are going to collect tax, on behalf of the insureds, from NSW premiums paid to those insurers. You must obtain your own advice in relation to this matter.**

1 Introduction

The collection of the first instalments of this tax from insurers have been held in abeyance for several months while the Insurance Council tried to develop an alternative means of funding the NSW Government's liabilities upon the collapse of HIH. However, it seems that this process has now stalled and the Office of State Revenue has issued assessments in relation to the 2002 year (based on 2001 year premiums).

The following major amendments have also been made to the IPT legislation in the meantime:

1. Insureds dealing with insurers not registered to carry on an insurance business in Australia will be liable to a 1% tax on NSW premiums on policies taken out after 29 November 2001. Brokers may choose to collect this tax from the insureds and remit the amounts to the Office of State Revenue on a collective basis monthly.
2. With retrospective effect, when insurance is taken out with an insurer registered to carry on business in Australia, the liability for the IPT falls upon the insurer, and not an intermediary receiving the premiums where the insurer is located outside NSW.

2 What is the IPT?

As outlined in my previous letter, the IPT is a tax calculated by reference to the annual premiums received by insurers for general insurance relating to property and risks located in New South Wales (referred to hereafter as “NSW premiums”), with certain specific exclusions, such as reinsurance.

3 How is the tax levied ?

\$65M of the annual tax burden is to be apportioned amongst insurers according to each insurer’s share of the total NSW premiums for all insurers in the previous year.

An important change to the IPT is that the Government hopes to raise an additional \$4M by the imposition of a 1% tax upon insureds where they take out insurance with an insurer who is not registered to carry on business in Australia under the Commonwealth *Insurance Act 1973*.

Lloyd’s Underwriters are registered under that legislation. Therefore, the 1% tax will not be imposed upon insureds taking out policies with Lloyd’s.

4 Who is liable for the tax?

4.1 Insurers

Under the original IPT legislation, the liability for the IPT was upon both the person writing insurance (i.e. Lloyd’s Underwriters) and a person who received NSW premiums on behalf of an entity outside of NSW that wrote general insurance (i.e. coverholders and brokers receiving NSW premiums on behalf of Lloyd’s Underwriters). The latter part of the definition of “insurer” also seemed to extend to agents outside NSW receiving NSW premiums on behalf of Lloyd’s Underwriters.

The recent amendments to the legislation overcome the problem under the original legislation which disadvantaged insurers located outside NSW by potentially double counting their NSW premiums in arriving at the IPT attributable to them individually and to their intermediaries. Thus, under the amended legislation, only Lloyd’s Underwriters will have a liability to IPT, and not coverholders and brokers receiving NSW premiums on behalf of Lloyd’s Underwriters.

4.2 Insured Persons

Initially the legislation placed the liability for IPT in relation to NSW premiums for insurers outside NSW on the broker/agent receiving the premiums on behalf of the insurer. Under the amended legislation there is no primary liability upon intermediaries such as coverholders

and brokers. The primary liability falls upon the insurer if the insurer is registered under the Commonwealth *Insurance Act 1973*, or the insured if the insurer is not so registered. This amendment will apply to insureds who obtain, effect or renew any general insurance with an unregistered insurer from **29 November 2001**.

Where an insured has a liability for this tax, it must be remitted to the NSW Office of State Revenue ("OSR") by the 21st of the month following the month in which the premium is paid by the insured.

We understand that brokers will be able to act as collection agents for the IPT and collect tax from insureds for remission to the OSR as agent for the insured on a monthly basis. We understand that the collection mechanism will be similar to that which currently exists for stamp duty. Further information should be provided to you directly by NIBA shortly.

Please remember that as Lloyd's Underwriters are registered under the Commonwealth *Insurance Act 1973*, you will not need to collect 1% tax from insureds for business written with Lloyd's. You will, however, need to report to Lloyd's the NSW components of any premiums for business written for Lloyd's so that Lloyd's Underwriters can meet their IPT obligations.

5 Registration

You may have received a letter from the OSR recently enclosing a Confirmation of Information questionnaire. As you are not registered as an insurer under the *Insurance Act 1973*, you should answer "NO" to the first question and there should be no need for you to lodge a return with the Office of State Revenue disclosing premiums for the 2000/2001 year.

6 What numbers do we need from you?

6.1 Premiums post 1 January 2002

London LPSO will pick up, in a new system, any NSW premium income advised to London by an Australian coverholder in a document (be it a fax, email or bordereaux) dated **on or after 1 January 2002**. Thus, in any advices dated on or after 1 January 2002, you will need to show the amount of NSW premiums. This will include, for example, the reporting of December premiums as the relevant bordereaux would not be sent to London until some time after 1 January 2002.

NSW premiums for the purpose of this reporting to London will be very similar to the premiums that are liable to NSW stamp duty. Most of the information that we will require should therefore be able to be picked up from your periodic stamp duty returns. You should note that the premiums will need to be inclusive of GST (if applicable) and fire services levy but exclusive of stamp duty and should be shown prior to any income tax withholding. As with stamp duty, reinsurance premiums should be excluded from the IPT premiums.

Further, where you have entered into co-insurance arrangements in relation to NSW business, we only need to know the share of the relevant premiums attributable to Lloyd's Underwriters.

6.2 Premiums for 1 July 2001 to 31 December 2001

Given that the new reporting mechanism will only apply to premiums reported to London in a document dated on or after 1 January 2002, we will need you to separately provide information concerning NSW premiums (for Insurance Protection Tax purposes) written under Lloyd's binding authorities in the period:-

- beginning where you cut-off for the purpose of reporting NSW premiums in the questionnaire attached to my letter dated 25 July 2001; and
- ending with the last premiums reported to London in a document dated prior to 1 January 2002. This will mean that NSW premiums reported in your December bordereaux will **not** need to be included in the attached questionnaire as they will be covered by the new reporting system discussed above at section 6.1.

For your convenience, please find attached a pro-forma fax, which you can simply complete and fax, back to me with the required information. I would appreciate you returning the attachment by **15 February 2002**.

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We will keep you informed as further information comes to hand. In the interim, if I can be of any assistance, please do not hesitate to contact me on (02) 9223 1433.

Yours sincerely

Keith Stern
Lloyd's General Representative in Australia

FAX

TO: Keith Stern
Lloyd's Australia Limited

NUMBER: (02) 9223 1466

FROM: _____

NSW premiums (for Insurance Protection Tax purposes) written under our Lloyd's binding authority for the period:

- **beginning** where we cut-off for the purpose of reporting NSW premiums in the questionnaire attached to your letter dated 25 July 2001; and
- **ending** with the last premiums reported to London in a document dated prior to 1 January 2002.

See paragraph 6.1 of the attached letter for a definition of the relevant premiums.

A\$ _____