

FROM: Manager, International Tax
LOCATION: 86/441
EXTENSION: 6860
DATE: 23 August 2001
REFERENCE: TAX/MCM/ln/Y2602
SUBJECT: **AUSTRALIA – INSURANCE PROTECTION TAX**
SUBJECT AREA(S):
ATTACHMENT: Appendix 1
ACTION POINTS: Underwriters and brokers to note
DEADLINE: Now

1. Introduction

- 1.1 This bulletin advises underwriters and brokers of a new tax that is payable on business written in New South Wales, Australia. The tax, which will be known as the Insurance Protection Tax, was introduced by legislation passed in June 2001 and will be used to finance the new NSW policyholders protection fund.
- 1.2 The Insurance Protection Tax will first be due for the Australian tax year 2001/02 (i.e. the year from 1 July 2001 to 30 June 2002). The tax will be payable in four instalments, on 15 September, 15 December, 15 March and 15 June. This bulletin sets out the initial arrangements that are being made for Lloyd's underwriters to comply with the tax.

2. Description

- 2.1 The Insurance Protection Tax is due on insurance premiums covering property located in NSW and risks, contingencies or events which may occur within, or partly within, NSW. Reinsurance premiums are exempt.
- 2.2 To determine the tax payable by each insurer in each year, the New South Wales Office of State Revenue (OSR) will apportion a set amount between insurers according to their share of the total NSW premiums for the preceding year. For 2001/02 the total amount of tax to be collected is AUS \$69 million. This will be

apportioned by reference to insurers' NSW premium income for the year to 30 June 2001, and it is provisionally estimated that the additional cost to Lloyd's underwriters will be somewhere in the region of 1% of the gross premium.

- 2.3 The Insurance Protection Tax must not be charged to policyholders and the Insurance Council of Australia has received legal advice that an insurer risks prosecution if this happens.

3. Registration and Returns

- 3.1 Insurers were required to make a return of their premium income for the year to 30 June 2001 by 15 August and the OSR will shortly let them know how much tax is payable for 2001/02. It has been provisionally agreed that Lloyd's should register and make one return centrally on behalf of all underwriters and this has been done. The amount of tax payable by each syndicate will be calculated and collected by Taxation Department shortly before each payment date for onward payment to the OSR.
- 3.2 In certain circumstances the Australian broker or intermediary will have to register and pay the tax on the insurer's behalf. The OSR have still to decide when and how this procedure should be used but it seems that they are considering its use for business written by foreign insurers.
- 3.3 Though Lloyd's has indicated that it would prefer to make one return covering all NSW business the OSR are currently only prepared to agree to this being done for coverholder business. Discussions continue about open market business.
- 3.4 Keith Stern, Lloyd's General Representative in Australia, has written to all coverholders to collect information regarding NSW premiums written by coverholders in the year to 30 June 2001. A copy of this letter is attached as Appendix 1.
- 3.5 As NSW premiums are not allocated a separate FIL code we are proposing to return an estimate based on LPSO records if Lloyd's has to include open market business in the central return.
- 3.6 Further details will be provided about the procedures that will be used to compile records of NSW premium income for 2001/2002 and later years as soon as possible.

4. Readership and contact details

- 4.1 This bulletin is being sent to underwriters, Lloyd's brokers and recognised auditors.
- 4.2 Further information on how the tax will work will be given as soon as it is available. In the meantime 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 6862 (e.mail: Maureen.C.Mcleod@lloyds.com).

24 July 2001

Doc no: SYDCB\01198003.2

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. Although the collection mechanism of the IPT has not been finally determined by the Office of State Revenue ("OSR"), I have outlined below the general operation of the IPT as currently understood.

Lloyds has been reviewing the impact of this tax and is having discussions with the OSR concerning our obligations. Whilst the IPT is payable by Lloyd's Underwriters, it is anticipated that we will need to collect information from you to assist us in meeting these obligations. The information that we currently need is also outlined below.

INTRODUCTION

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 policyholders. 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.

HOW IS THE TAX LEVIED ?

The \$69M 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 commencing 15 September 2001.

WHO IS THE INSURER?

The IPT legislation currently imposes the IPT upon both the person writing insurance (i.e. Lloyd's Underwriters) and a person who receives NSW premiums on behalf of an entity outside of NSW that writes general insurance (i.e. coverholders and brokers receiving NSW premiums on behalf of Lloyd's Underwriters). The latter part of the definition of "insurer" would seem to also extend to agents outside NSW receiving NSW premiums on behalf of Lloyd's Underwriters.

The OSR is aware that the legislation, as it currently stands, would disadvantage insurers located outside NSW by double counting their NSW premiums in arriving at the IPT attributable to them individually and to their intermediaries. The OSR is still in the process of resolving this issue of double taxation but has indicated that as far as possible it will seek to impose the IPT upon the insurer, rather than upon the intermediary.

While the OSR recognise that this may mean that some NSW premiums escape the net due to an inability to identify and enforce liabilities upon non-NSW insurers, this is largely outweighed by the administrative burden of exponentially increasing the number of taxpayers (i.e. by treating agents and brokers, rather than just insurers, as taxpayers).

The OSR is also aware that if the liability is placed personally on an agent / broker acting for a non-resident insurer, the agent may not have ongoing arrangements which would allow it to recoup the IPT from the non-resident insurer. This would be inconsistent with the objective of levying this tax upon insurers.

From our perspective, this would mean that it would be the Lloyd's Underwriters, rather than coverholders and brokers in receipt of NSW premiums, that would be liable for the IPT. Thus, Lloyds, on behalf of the Lloyd's Underwriters will be responsible for the lodgment of the annual return required for IPT purposes and payment of the quarterly instalments. Centralisation of the return lodgment process is consistent with our increased emphasis on centralised accounting and reporting throughout the world. It will also simplify from our perspective the collection of the IPT from Lloyd's Underwriters and the payment to the OSR of the quarterly instalments. It would also prevent the need for coverholders and brokers to assume tax liabilities on behalf of Lloyd's Underwriters.

REGISTRATION

You may have received a letter from the OSR recently enclosing an Application for Registration under the Insurance Protection Tax Act 2001. On the basis that Lloyd's will assume responsibility for the IPT attributable to Lloyd's coverholder business, we have been verbally informed by the OSR that you do not need to register if the only insurer outside NSW for whom you act is Lloyd's. We are continually attempting to clarify this issue with the OSR and will advise you as soon as written advice is obtained.

In the interim, as the date for registration is 31 July 2001, you need to consider whether to rely on the verbal advice that we have received or register notwithstanding that advice. To assist us in taking this matter up with the OSR, it would be helpful if you could let us know whether you have decided to register even though Lloyd's is the only insurer outside NSW for whom you act. A questionnaire is attached for this purpose. It would be appreciated if you could return this by **31 July 2001**.

WHAT NUMBERS DO WE NEED FROM YOU?

Unfortunately, given the retrospective manner in which the IPT is calculated, we will need to collect information from you in relation to NSW premiums for certain insurance written in the year ended 30 June 2001. This is needed for our first return which, at this stage, must be lodged by 15 August 2001. It would therefore be appreciated if you could get back to me using the attached questionnaire by **31 July 2001** with details of the NSW premiums collected by you for Lloyd's business for the year ended 30 June 2001.

Premiums for this purpose will be very similar to the premiums that are liable to NSW stamp duty. Most of the information that we 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 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.

It is anticipated that we will also need to collect further information from you at a later stage in relation to the first few months of the current financial year. The premium reporting thereafter should allow us to collect this information as part of the regular reporting process.

* * * * *

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: _____

1. **Have you received an Application for Registration - Insurance Protection Tax Act 2001 from the NSW Office of State Revenue ("OSR")?** *(please tick the appropriate box)*

2. **Have you registered?**
If YES, could we please have a copy of any letter that you sent to the OSR enclosing the completed Application for Registration

3. **Is Lloyd's the only insurer outside NSW for whom you act?**

4. **NSW premiums (for Insurance Protection Tax purposes) written under your Lloyd's binding authority in the period 1 July 2000 - 30 June 2001**
See our letter for a definition of the relevant premiums

YES	NO

\$
