

# MARKET BULLETIN

REF: Y4840

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| <b>Title</b>         | Withholding tax obligations in Spain   |
| <b>Purpose</b>       | To provide an update to bulletin Y4037 issued on 10 July 2007 regarding the duties of Lloyd's Spain and the impact to managing agents when dealing with Spanish claims |
| <b>From</b>          | Emer FitzGerald – Tax Manager<br>+44 (0)20 7327 6856   |
| <b>Date</b>          | 14 November 2014   |
| <b>Deadline</b>      | With immediate effect  |
| <b>Related links</b> | None   |

## 1. Introduction

In 2007, Lloyd's issued market bulletin Y4037, which detailed requirements for managing agents when settling certain types of claims arising in Spain or paying professional fees to Spanish resident individuals. It applies to direct Spanish business only.

There have been certain amendments to the Spanish tax legislation, including rate changes and changes to types of claims caught under the provisions. These amendments are set out below.

## 2. Duties of Lloyd's Spain as Underwriters' Fiscal Representative in Spain

Y4037 sets out that, entities wishing to operate in Spain on a Freedom of Services basis ("FOS") must appoint a fiscal representative to comply with any tax obligations relating to their activities in Spain.

Lloyd's Iberia Representative SLU ("Lloyd's Spain") has performed the role of the Underwriters' fiscal representative since February 2004. As part of this role, Lloyd's Spain effects monthly/quarterly payments of Insurance Premium Tax and Consorcio charges to the Tax Authorities and the Consorcio, respectively. This is carried on in conjunction with Lloyd's Taxation Department, which supplies Lloyd's Spain with the relevant information where necessary.

The duties of a Spanish fiscal representative also include a duty to withhold and pay over tax in relation to certain transactions performed in Spain. Accordingly, Lloyd's Spain is required to withhold tax not only on certain indemnities which are subject to withholding tax, but also on certain payments made, such as professional fees paid to doctors, loss adjusters, lawyers, notaries and other experts. The circumstances under which tax must be withheld were described in Y4037. For ease of identification, they are repeated below and updated for the recent changes.

### 3. **Obligation to withhold tax on indemnities to be paid by Managing Agents**

In accordance with the Spanish fiscal law, tax may be required to be withheld on certain indemnities paid by insurers to Spanish resident individuals. This previously only applied to claims under life, accident and illness and medical expenses insurance policies. **Please note that this now applies to claims under:**

- a) Saving life insurances if the policyholder and the beneficiary are the same person.
- b) Life insurances covering also disability as a result of accident or illness.
- c) Group policies covering commitments to provide pension schemes.
- d) Sickness insurances covering disability.
- e) Accident insurances (when the indemnity exceeds the statutory amount)

Where indemnities in respect of any of the above is to be paid, Lloyd's Spain, as fiscal representative, must withhold the required amount of tax and pay it to the Spanish tax authorities within the legal deadline.

Liability and damage policies are not subject to this obligation. Please see Appendix 1 for more detailed up-to-date information about which types of claim are included and the rates of tax which apply.

### 4. **Obligation to withhold tax on certain other payments to be paid by Managing Agents**

Invoices to be paid by managing agents to "external experts" (see Appendix 1) who are Spanish resident individuals are subject to withholding tax. The current rate is **21% (19% from 1 January 2015)**. As with indemnity payments, the withholding obligation lies with Lloyd's Spain as fiscal representative and Lloyd's Spain is responsible for ensuring that the tax is paid to the Spanish tax authorities.

As explained in Y4037, there is no requirement to withhold tax under Spanish tax law when making payments to companies, for instance, a law firm or a loss adjuster's firm. However, where the payment is made to an individual via an intermediary company, Lloyd's Spain has a withholding obligation and tax must be withheld. If the payment is being made to a professional partnership then tax must be withheld if the partners are Spanish resident individuals. However, since Spanish law firms are frequently established as companies, this is unlikely to be relevant in many cases.

## 5. Implications for Managing Agents

Claims payments and expenses do not go through Lloyd's centrally or Lloyd's Spain, except where there is a withholding tax obligation in relation to the payment. It is essential that managing agents continue to communicate the relevant information to Lloyd's Spain so that the necessary tax can be paid on a timely basis. Please note that Lloyd's Spain is not able to provide tax advice and, therefore, we will not calculate the applicable withholding tax. If advice is needed, the managing agent should contact an external tax advisor.

In most cases the managing agent is required to pay only the withholding tax element to Lloyd's Spain and pay the remaining net amount to the appropriate recipient as normal. However there may be circumstances in which the managing agent will be required to pay the full amount via Lloyd's Spain and these will be discussed on a case by case basis. Lloyd's Spain keeps a bank account in Madrid, to which the amount of withholding tax due should be transferred. Lloyd's Spain will then pass this on to the Spanish tax authorities. Where claims are processed by XCS, which should be the majority of cases, the settlement paperwork submitted will need to stipulate clearly the withholding tax amount to be paid to Lloyd's Spain, if any.

Please note that Lloyd's Spain, as fiscal representative, shall be liable for any monetary penalties which are incurred as a result of failing to withhold and pay over the necessary tax or any other tax infringements. However, penalties may be recharged to the managing agent if it has failed to provide the information or funds required.

## 6. Action to be taken

### (i) Identification of relevant Spanish claims

Appropriate systems must remain in place so that Spanish claims and claims expenses are flagged as they arise. These should then be reviewed to determine whether tax should be withheld in accordance with the guidance above.

### (ii) Notification to Lloyd's Spain

Upon identification of a payment on which withholding tax is due, the managing agent should send the details specified in Appendix 2 to Beatriz Ramirez of Lloyd's Spain; [beatriz.ramirez@lloyds.com](mailto:beatriz.ramirez@lloyds.com) so that the amount to be withheld can be agreed. If any additional information is required for reporting purposes it will also be collected at this stage.

(iii) Transfer of funds

Once the amount to be transferred has been agreed, this should be notified on the settlement paperwork to XCS, or transferred directly to the bank account set up by Lloyd's Spain if the claim is being processed outside XCS.

**7. Further information**

Please find attached a summary showing the updated rates of withholding tax which apply to certain payments (Appendix 1).

If you have any queries about this bulletin please contact:

In Spain:

Beatriz Ramirez      Tel: +44 (0)20 7327 7902      [beatriz.ramirez@lloyds.com](mailto:beatriz.ramirez@lloyds.com)

This bulletin is being sent to all members' agents, direct corporate members, managing agents, recognised accountants, market associations, underwriters and Lloyd's brokers.

**APPENDIX 1**

**SUMMARY OF TAX WITHHOLDING OBLIGATIONS**

| <b>INDEMNITIES</b>  | Tax Withholding   |
|---|---|
| <b>Life insurance</b>   |   |
| Saving life insurance policies if the policyholder and the beneficiary are the same person.                           | 21% (19% from 1st January 2015).                            |
| Life insurance covering disability.   | 21% (19% from 1st January 2015).                            |
| Policies covering commitments to provide pension scheme.  | As per fiscal scale.*                                       |
| <b>Accident</b>   |   |
| When the indemnity exceeds the statutory amount.*   | 21% (19% from 1st January 2015).                            |
| When the policyholder is the employer and the indemnity exceeds the statutory amount.*                                | As per fiscal scale.*                                       |
|   |   |
| <b>Sickness</b>   |   |
| Indemnities arising from disability   | 21% (19% from 1st January 2015).                            |
| When the policyholder is the employer   | As per fiscal scale.*                                       |
| <b>Land vehicles</b>  | NO  |
| <b>Railway rolling stock</b>  | NO  |
| <b>Aircraft</b>   | NO  |
| <b>Ships</b>  | NO  |
| <b>Goods in transit</b>   | NO  |
| <b>Fire and natural forces</b>  | NO  |
| <b>Other damage to property</b>   | NO  |
| <b>Motor vehicle liability</b>  | NO  |
| <b>Aircraft liability</b>   | NO  |
| <b>Liability for ships</b>  | NO  |
| <b>General liability</b>  | NO  |
| <b>Credit</b>   | NO  |
| <b>Suretyship</b>   | NO  |
| <b>Miscellaneous financial loss</b>   | NO  |
| <b>Legal expenses</b>   | NO  |
| <b>Assistance</b>   | NO  |
|   |   |
| <b>PAYMENTS TO EXTERNAL EXPERTS</b> (individual lawyers, loss adjusters, doctors, Notaries, <i>Procuradores</i> etc.) | 21% (until 31 December 2014)<br>19% (from 1st January 2015) |
|   |   |

\* Please contact Beatriz Ramirez of Lloyd's Spain for further information.

**APPENDIX 2** – Claim details

1. Name of managing agent
2. Type of indemnity/expense to be paid
3. Gross amount of indemnity/expense
4. Party to whom payment is due
5. Copy of invoice/payment note