

MARKET BULLETIN

REF: Y4922

Title	Withholding tax obligations in Spain
Purpose	To provide an update to bulletin Y4840 issued on 14 November 2014 regarding the duties of Lloyd's Spain and the impact on managing agents when dealing with Spanish claims
From	Lloyd's Tax Department
Date	4 September 2015
Deadline	With immediate effect
Related links	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.

In November 2014, market bulletin Y4840 was issued to update the market on certain amendments to the Spanish tax legislation, including rate changes and changes to types of claims caught under the provisions. On 11th July 2015, the Royal Decree - Law 9/2015 modified the tax rates applicable to certain types of business. The changes apply from 12th July 2015, with further changes to the rates applicable from 1 January 2016. Appendix I to this bulletin shows the rates relating to each period by type of business.

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

Y4037 provides 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 Tax 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 applies to claims under:**

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

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

Liability and damage policies are not subject to this obligation. Please see Appendix 1 for more detailed up-to-date information about what 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 **15% (19% from 1st January 2015 to July 11th 2015 and 15% from July 12th 2015 onwards)**. 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 neither Lloyd's Spain nor Lloyd's tax department is 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 in Lloyd's Spain (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: 0207 327 7902

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.

The information included in this bulletin and its appendices is general in nature and should not be treated as tax advice. Should tax advice be required, we recommend that you contact a tax adviser.

APPENDIX 1

SUMMARY OF TAX WITHHOLDING OBLIGATIONS

INDEMNITIES	Tax Withholding			
Life insurance	2014	January 1st, 2015 to July 11th, 2015	July 12th, 2015 to December 31th, 2015	2016 onwards
Saving life insurance policies if the policyholder and the beneficiary are the same person.	21%	20%	19,50%	19%
Life insurance covering disability.	21%	20%	19,50%	19%
Policies covering commitments to provide pension scheme.	As per fiscal scale	As per fiscal scale.**	As per fiscal scale**	As per fiscal scale**
Accident				
When the indemnity exceeds the statutory amount.*	21%	20%	19,50%	19%
When the policyholder is the employer and the indemnity exceeds the statutory amount.*	As per fiscal scale	As per fiscal scale.**	As per fiscal scale**	As per fiscal scale**
Sickness				
Indemnities arising from disability	21%	20%	19,50%	19%
When the policyholder is the employer	As per fiscal scale**	As per fiscal scale.*	As per fiscal scale**	As per fiscal scale**
Land vehicles			NO	
Railway rolling stock			NO	
Aircraft			NO	
Ships			NO	
Goods in transit			NO	
Fire and natural forces			NO	
Other damage to property			NO	
Motor vehicle liability			NO	
Aircraft liability			NO	
Liability for ships			NO	
General liability			NO	
Credit			NO	
Suretyship			NO	

Miscellaneous financial loss		NO		
Legal expenses		NO		
Assistance		NO		
PAYMENTS TO EXTERNAL EXPERTS (individual lawyers, loss adjusters, doctors, Notaries, <i>Procuradores</i> etc.)	21%	19%	15%	15%

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

** Fiscal scale applicable from January 1st, 2015 to July 11th, 2015

Taxable base (up to)	Withholding amount	Rest of taxable base (up to)	Tax rate
0.00	0.00	12,450.00	20%
12,450.00	2,490.00	7,750.00	25%
20,200.00	4,427.50	13,800.00	31%
34,000.00	8,705.50	26,000.00	39%
60.000,00	18,845.50	Amount over	47%

** Fiscal scale from July 12th, 2015 to December 31th, 2015

Taxable base (up to)	Withholding amount	Rest of taxable base	Tax rate
0.00	0.00	12,450.00	19.50%
12,450.00	2,427.75	7,750.00	24.50%
20,200.00	4,326.50	13,800.00	30.50%
34,000.00	8,535.50	26,000.00	38%
60.000,00	18,415.50	Amount over	46%

** Fiscal scale for 2016 and onwards

Taxable base (up to)	Withholding amount	Rest of taxable base	Tax rate
0.00	0.00	12,450.00	19%
12,450.00	2,365.50	7,750.00	24%
20,200.00	4,225.50	13,800.00	30%
35,200.00	8,725.50	24,800.00	37%
60.000,00	17,901.50	Amount over	45%

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