

MARKET BULLETIN

REF: Y4037

Title	New withholding tax obligations in Spain
Purpose	To explain the duties of Lloyd's Spain and the impact to managing agents when dealing with Spanish claims
From	Cameron Murray, Senior Manager, International Regulatory Affairs, International Market Access Contact details: 0207 327 6854, email: cameron.murray@lloyds.com
Date	10 July 2007
Deadline	With immediate effect
Related links	None

1. Introduction

This bulletin details requirements for managing agents when settling certain types of claims arising in Spain or paying professional fees to Spanish resident individuals. This applies to direct Spanish business only.

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

According to Spanish law, 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 España Representative SL ("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 currently carried on in conjunction with Lloyd's Taxation Department, which supplies Lloyd's Spain with the relevant information where necessary.

Regulations have been introduced in Spain which extend the duties of a Spanish fiscal representative to include a duty to withhold and pay over tax in relation to certain transactions performed in Spain, in accordance with the provisions of Spanish law on personal income tax, corporate tax and non-resident tax.

Accordingly, Lloyd's Spain is required to withhold tax not only on certain claims 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 are described in more detail below.

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 claims paid by insurers to Spanish resident individuals. **This only applies to claims under life, accident and illness and medical expenses insurance policies.** Where such a claim is to be paid, Lloyd's Spain, as fiscal representative, is obliged to withhold the required amount of tax and pay it to the Spanish tax authorities.

Liability and Damage policies are exempt and therefore not subject to this obligation. Please see Appendix 1 for more detailed 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" (listed in Appendix 1) who are Spanish resident individuals are subject to 15% withholding tax. As with claims 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. 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 still 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 currently go through Lloyd's centrally or Lloyd's Spain. This will need to change going forward where there is a withholding tax obligation in relation to the payment. It is essential that managing agents 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 detailed tax advice to managing agents and, therefore, we will not calculate the applicable withholding tax. If advice is needed please contact an external tax advisor.

In most cases the managing agent will be 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 has opened 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 should be put in place so that Spanish claims and claims expenses are flagged as they arise. These should then be reviewed to determine whether tax needs to 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 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 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

In London

Helen Harrison Tel: 020 7327 6859

helen.harrison@lloyds.com

Lloyd's taxation department

Cameron Murray
Senior Manager, International Regulatory Affairs,
International Market Access

APPENDIX 1

SUMMARY OF TAX WITHHOLDING OBLIGATIONS

INDEMNITIES	Tax Withholding
Life insurance	
Life insurance policies	15%
Group life insurance policies	As per fiscal scale*
Accident	
Up to the statutory amount*	NO
Above the statutory amount*	15%
Illness	
Fixed pecuniary benefits arising from disability of 33% or above*	15%
Others	NO
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 etc.)	15%

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

APPENDIX 2 – Claim details

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