GP ISSUES AND SOLUTIONS

Oana Popescu of Sovos provides guidance around the continued issues global programmes face and what their solutions are

Running multinational and multi-line programmes can pose multiple challenges for organisations from an insurance premium tax perspective. Some of these challenges are from a setup, tax, regulatory and structural point of view, but equally important to consider is how firms can turn these challenges into opportunities to plan and run these programmes in a more streamlined and efficient way.

When setting up a global programme through an insurance captive, there are several considerations to be taken into account early in the planning stage in order to address premium tax compliance. Initially, the captive must ensure it can write insurance in the territories it intends to cover, be it on an authorised or unauthorised basis. This step is important for two main reasons.

Writing on a non-admitted basis can have consequences on the legality of the contracts sold. Many jurisdictions will consider a contract void if written on a non-admitted basis. The legal implications on both the insurance company and policyholder should not be neglected.

Although not always a standard rule, in several territories, the authorisation to write business will trigger registration as the taxpayer. Without the authorisation, local authorities will not provide a tax identification and premium taxes will remain undeclared.

For the European Union and the European Economic Area (EU/EEA), the authorisation to write in the different territories is facilitated by the Freedom of Services regime. Through a 'passporting' process, EU/EEA insurers can quickly be granted authorisation in all EU member states.

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Before writing any business outside its domestic market, an insurer should instruct its home regulator to 'passport' its authorisations to each local regulator where there is a plan to write business. It goes without saying that only business related to passported insurance branches can be written (except for branches where non-admitted permitted rules may apply and considered on a country-by-country basis). Each local regulator should then acknowledge the passporting of the authorisations on receipt of the home regulator demand.

At that point, business can be written and the process of registering as a taxpayer can begin. Local timescales need to be considered as it can take between two-eight weeks to receive a tax identification and be able to file the first tax return. Some premium taxes are due on the inception of the policy and one of the major pitfalls we have seen is that insurers usually start thinking about IPT compliance late in the underwriting process or, sometimes, even after the inception of the policies. Given the lengthy and sometimes complex registration process, this can lead to insurers being in a position where their premium tax liabilities fall due; however they cannot proceed with declaring and settling the liabilities as they have not yet obtained a tax ID in the relevant tax jurisdictions. While some territories, such as the Netherlands, allow newly registered insurers to settle any undeclared premium tax during the first tax return submission, in most jurisdictions, voluntary disclosures of unpaid premium tax liabilities will be required to be able to disburse of the historical liability. This could result in fines and penalties for late disclosure and payment being imposed by the tax authorities.

On other continents, authorisation to write insurance is a less straightforward concept. There are still some territories where insurance entities can write on an unauthorised basis, but an increasing number are no longer accepting this and impose that the risk is insured locally. This means that some territories would no longer be covered under a global programme, except under Difference in Limit/Difference in Conditions (DIC/DIL) cover. Regulatory requirements should therefore be the first consideration when writing global programmes as they will affect the territorial scope. An annual review of the jurisdictions where the captive is authorised to write, and those that accept insurers to write on an unauthorised basis, can be a useful exercise to ensure this first step of compliance is completed.

IPT compliance in the context of multinational and multi-line insurance programmes can be complex, driven mainly by the lack of harmonisation of premium taxes rules across the globe. Simply put, each tax jurisdiction has different rules and regulations when it comes to premium and parafiscal taxes and local knowledge is paramount for insurance companies to be able to manage risks of non-compliance in an ever-changing tax and regulatory landscape.

In Europe alone there are 70+ indirect taxes that could attach to an insurance agreement, with new indirect taxes, mainly parafiscal charges, being introduced in various jurisdictions. For instance, in 2019 we have seen the introduction of a compulsory membership to the Danish Guarantee Fund with an entrance fee of DKK 100,000 and the application of a fixed-fee new levy for this fund on specific insurance contracts. In most tax jurisdictions, the main factors that determine which indirect taxes apply to a certain insurance agreement depend upon the location of risk as well as the type of risk covered by the contract. As soon as the risk is located in a relevant territory, the tax treatment should be applied based on the specific territory's premium tax legislation. Therefore, the more territories and/or lines of business added to a programme, the more complex the premium tax treatment will be. It all comes down to the premium allocation exercise which should be conducted annually, documented and reviewed to assess whether the risks are accurately located and apportioned.

Given the complexity of the IPT treatment for a global programme, it is paramount that insurers consider the IPT implications early on during the underwriting and binding process. Premium tax rates and application can vary substantially from jurisdiction to jurisdiction and even within the same tax jurisdiction. For example, in Europe the applicable rates can vary from exempt to 42.9% of the taxable basis. Applying the wrong rates or the incorrect type of premium taxes to an insurance programme can significantly impact an insurer's P&L. Undercharging premium tax could lead to fines and penalties while overcharging IPT can result in uncompetitive pricing and/or reduced profit. While it is possible to recover overpaid premium taxes from the tax authorities, given the error is discovered within the statute of limitations of each specific tax jurisdiction, it is not always a straightforward exercise. Based on our experience, tax reclaims can take months or even years to be processed by the tax authorities, often leading to a series of unwelcome enquiries from the authorities who want to ensure that there is a legitimate reason behind the tax reclaim. Insurance entities should therefore conduct an annual review of the premium taxes applicable on their programmes ahead of renewal.

Another major challenge that global and multi-line programmes face due to lack of harmonisation is the ongoing filing of premium tax liabilities. In the EU/EEA, there are over 500 filing and payment deadlines that potentially need to be met. The submission methods also vary from territory to territory, with some requiring online submissions, other email submissions and a few still requiring actual paper returns to be posted to the tax office. This can become an administrative headache as one transaction or invoice for a global programme can result in multiple transactions at various points in time when it comes to filing and settling premium taxes. The more territories an insurance company has taxes to declare in, the more complicated it is to ensure comprehensive and timely compliance. Therefore, when filing premium taxes, the insurance company should be aware of the following.

> "Technology is driving innovative solutions to help captives navigate the complexities of premium tax compliance"

Tax point

The key compliance element to determine when a tax should be paid and declared is the tax point, in other words, the event that triggers the tax liability. As far as the EU/EEA is concerned, tax points vary between countries, however the most common tax point for premium taxes in the EU/EEA is the premium paid date. Some territories allow the insurer to opt for an alternative tax point but unfortunately this is not common. It can be difficult for insurers to declare on time as the date used for internal reporting is not always the same as the tax point date. The tax point should be considered early enough in the process, whether the captive opts for a standard tax point or an application on a country-by-country basis. Any decision on the tax point application should be taken in advance to ensure correct and streamlined tax reporting.

Tax authorities deadlines

Deadlines for tax payments may fall in the first week or last day of a month. For example, the deadline for payment and returns in Cyprus is the 10th of the month following the taxable period, while in Austria payment must be made 45 days following the end of the taxable period and the returns must be submitted on an annual basis. In order to ensure a quick turnaround at the end of each month, tax reporting tools should be built in a way that underwriting systems capture all the information required to file premium taxes according to local requirement. At the same time, the reports generated at the end of the process must match the requirement of the tax returns to be submitted.

Filing frequency

In addition to the deadlines, the filing frequency can differ from one territory to another. If most of the premium taxes are declared monthly or quarterly, some specificities can make the filing process more complex. Countries like Austria and Italy can request the tax payment on a monthly basis, while requesting the tax return annually. Tools such as a dashboard can be extremely beneficial in the compliance process to ensure correct follow-up and the ability to prioritise filings when they become due.

We can see that the IPT compliance to-do-list for a captive writing a global programme is extensive. Ticking all the boxes should be an annual exercise. To ensure this is done properly and consistently, it is essential that the process is accurately documented. The important point is that effective planning during the early underwriting process is key when it comes to premium tax compliance to avoid serious consequences such as adverse P&L impacts or unwelcome fines and penalties. Technology is driving innovative solutions to help captives navigate the complexities of premium tax compliance. It enables non-tax experts to confidently calculate and apply premium taxes by providing key information from up-to-date premium tax rates, tax filings requirement through to tax payment procedures. By automating the different steps of the compliance process of a global programme, technology can also ensure a more streamlined, consistent and documented approach towards IPT compliance.