



March, 2014

## Insurance Premium Tax

Although some EU Member States do not apply any tax or charge to an assurance transaction when an insurer transacts life assurance business on a cross-border basis within the EU, a majority do apply various indirect taxes or parafiscal charges, including insurance premium taxes (“IPT”) to the transaction with the policyholder. The tax structures and rates/charges imposed vary considerably from Member State to Member State.

Directive 2009/138/EC (‘Solvency II’), which lays down harmonizing rules for life assurance, non-life insurance and re-insurance, repeals amongst other EU directives, Directive 2002/83/EC (the ‘EU Consolidated Life Directive’). Solvency II seeks to harmonise to some extent the indirect tax approach of EU Member States with regard to insurance products. Article 157 of Solvency II echoes the wording of Article 50 of the EU Consolidated Life Directive and provides that “*every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State of the commitment*”. Article 13(14) of Solvency II, again largely mirroring the terms of the EU Consolidated Life Directive defines the “Member State of the Commitment” as “*the Member State in which either of the following is situated (a) the habitual residence of the policyholder; (b) if the policy holder is a legal person, that policyholder’s establishment, to which the contract relates.*”

In the recent decision of *RVS Levensverzekeringen NV v Belgium*, the Court of Justice of the European Union (‘ECJ’) addressed the precise scope of Article 50 of the EU Consolidated Life Directive by specifying which EU Member State is actually entitled to impose indirect taxes and charges (including IPT) to individual transactions between life assurance undertakings and their policyholders.

The ECJ has held that under Article 50 of the EU Consolidated Life Directive, the chargeable event for indirect taxation purposes is not

For further information on any of the issues discussed in this article please contact:



**Tom Carney**  
DD: +353 (0)1 673 1706  
[tom.carney@dilloneustace.ie](mailto:tom.carney@dilloneustace.ie)



**Sinéad O’Loughlin**  
DD: +353 (0)1 673 1732  
[sinead.ologhlin@dilloneustace.ie](mailto:sinead.ologhlin@dilloneustace.ie)

the conclusion of the life assurance contract between the life assurance undertaking and the policyholder but rather the individual payments of life assurance premium by the policyholder to the life assurance undertaking. The ECJ has specified that the EU Member State which is lawfully entitled to impose and receive the IPT is the EU Member State where the policyholder has his/her habitual residence at the time that the policyholder pays the premium to the life assurance undertaking (i.e. the Member State of Commitment) irrespective of where the policyholder had his/her habitual place of residence at the time the contract of life assurance was concluded between the policyholder and the life assurer.

As a consequence of the ECJ's decision in *RVS Levensverzekeringen NV v Belgium*, it is appropriate that life assurers should take all necessary steps to adopt and operate appropriate procedures to identify and track changes in the habitual residence of each of their individual policyholders with a view to ensuring that on each occasion that a premium payment is made by an individual policyholder to the life assurer, it can ensure that all appropriate indirect taxes and parafiscal charges (including IPT) are paid by it to the fiscal authorities of the correct EU Member State of commitment. Life assurers that fail to do so may expose themselves to tax claims from the EU Member States of commitment that is properly entitled to raise indirect taxes (including IPT) by virtue of Article 50 of the EU Consolidated Life Directive, having regard to the ECJ's decision.

Given the similarity in wording between Article 50 of the EU Consolidated Life Directive and Article 157 of Solvency II, it is reasonable to believe that Article 157 of Solvency II would be interpreted in light of the ECJ's decision in *RVS Levensverzekeringen NV v Belgium*. With this in mind, it is also appropriate that non-life insurers and re-insurers would have regard to the considerations addressed above.

Should you have any query or if we can be of further assistance to you, please do not hesitate to contact us.

## DILLON EUSTACE

### Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

### New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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