HMRC - IPT05150 - Definition Of Premium

Section 72(1) of the Finance Act 1994 defines ‘premium’ in relation to a taxable insurance contract as:

… any payment received under the contract by the insurer, and in particular includes any payment wholly or partly referable to-

(a) any risk,

(b) costs of administration,

(c) commission,

(d) any facility for paying in instalments or making deferred payment (whether or not payment for the facility is called interest), or

(e) tax.

These terms (a) to (e) will be explained in the following paragraphs.

The definition of premium is an inclusive one. The list of items at (a) to (e) is likely to prove comprehensive in practice, but that list is not exhaustive. And it is worth bearing in mind that, if an insurer or broker claims a part of a premium is outside that list, the law requires ‘any payment received under the contract by the insurer’ to be treated as part of the premium.

On the other hand it must be emphasised that for these elements to be treated as part of a premium for IPT purposes, they must each be received by an insurer or an agent on the insurer’s behalf under a taxable insurance contract.

Section72(1A) goes on to say,

Where an amount is charged to the insured by any person in connection with a taxable insurance contract, any payment in respect of that amount is to be regarded as a payment received under that contract by the insurer unless-

(a) the payment is chargeable to tax at the higher rate by virtue of section 52A above; or

(b) the amount is charged under a separate contract and is identified in writing to the insured as a separate amount so charged.

This ensures that any additional payments made by the insured for the insurance are also subject to IPT, for example where an intermediary adds an additional amount or mark-up to the premium.

Where an additional charge is made under a separate contract and is notified to the insured in writing, so that they are aware that they are entering into two contracts, one with the insurer and one with the intermediary, then the additional charge is not subject to IPT.

However, if the insurance is subject to the higher rate of IPT, then if the intermediary charges a separate fee, the intermediary will be required to register and account for IPT on their fees. Intermediaries in these circumstances are known as ‘taxable intermediaries’ and there is more information in IPT06800.

In 2006 HMRC became aware of an avoidance scheme which attempted to reclassify part of a premium payment. In brief, a third-party paid an insurer to provide cover to their customer; the payment had previously been treated as a taxable insurance premium and IPT accounted for. At the time payment was made the insured was unknown to the insurer and cover under the policy commenced at some point in the future. Under the proposed scheme, the insurer claimed to be providing the insurance free of charge, under a deed and that the payment from the third-party was not a premium received under a taxable insurance contract, but was instead a payment for the ‘right to require’ the insurer to provide the insurance to the customer. As such they suggested that the payment was not subject to IPT. Although we considered that the scheme did not achieve its intended aim, i.e. we still thought that the payment was premium received under the contract of insurance, the Budget 2007 inserted a new Section - 72(1)(B) into the Finance Act 94:

S72(1)(B) Where,

(a) an amount is charged (to the insured or any other person) in respect of the acquisition of a right (whether of the insured or any other person) to require the insurer to provide, or offer to provide, any of the cover included in a taxable insurance contract, and

(b) any payment in respect of that amount is not regarded as a payment received under that contract by the insurer by virtue of subsection (1A) above,

the payment is to be regarded as a payment received under that contract by the insurer unless it is chargeable to tax at the higher rate by virtue of section 52A above.

The new measure applies to all such payments received after 22 March 2007.

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