QBE European Operations

Technical claims brief

Monthly update | September 2015

QBE

Technical claims brief

Monthly update | September 2015

Contents

News

Increase to Insurance Premium Tax (IPT)

IPT increases on 1 November 2015 from 6% to 9.5% and applies to all new business and renewal policies with an inception date thereafter. IPT is applied to the taxable premium irrespective of any deferred or instalment plan.

The key points are:

1. The rate change is based on the date the policy incepts – so post 1 November 9.5%
2. Mid-term adjustments to a policy incepting pre 1 November, which give rise to an additional premium, are taxed at 6% up to 1 March 2016 (rising to 9.5% thereafter)
3. All business written via a delegated underwriting authority are subject to exactly the same rules
4. IPT applies to business and consumer insurance policies
5. There are a number of exemptions, including reinsurance, life insurance and pension linked insurance.

It will be incumbent on insurers to process policies without delay, to ensure customers are not exposed to additional tax exposure as a result of late or incomplete information.

The government predicts the IPT increase will provide the exchequer with an additional £530m in 2016, rising to an additional £1580m in 2021.

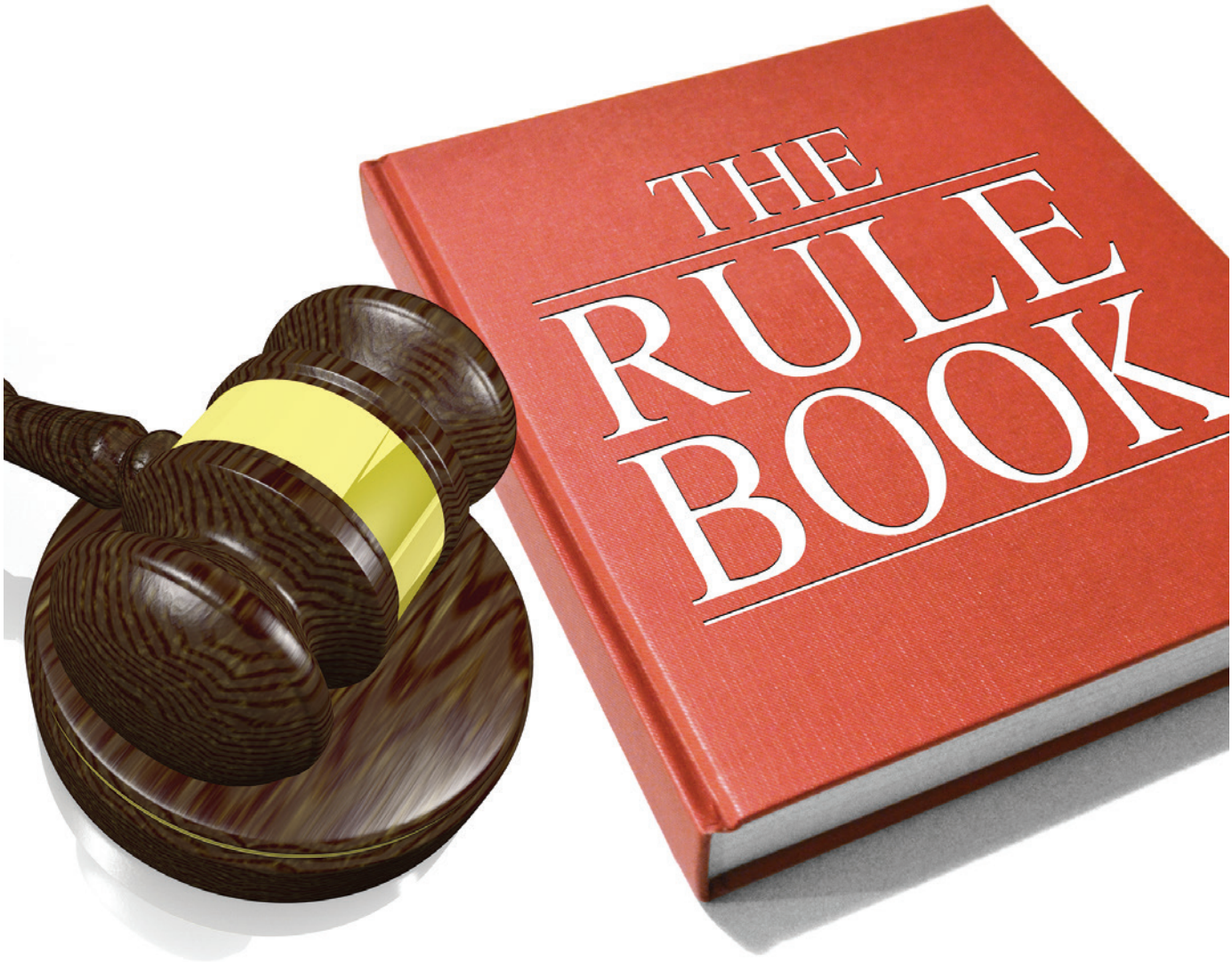
> “As with all tax rate increases, the decision has received widespread criticism, citing the related increase to insurance premiums, at a time when the government are looking to insurers to reduce premiums. The increase has also led some commentators to speculate as to whether this is the first of a number of increases to IPT, to bring it into line with VAT.

New Judicial College Guidelines for the assessment of general damages

The 13th edition of the Judicial College Guidelines (JCG) will be published before the end of September 2015. The JCG is used by practitioners, and the courts, to quantify the correct award for general damages recoverable, based on the nature and extent of the personal injury suffered.

The purpose of new editions is to keep track with inflation, and to reflect decisions of the higher courts on quantum. The application of the JCG is from the date of publication, so any increases are instantaneously applied to awards. The 13th edition will continue to include a column of figures indicating the 10% uplift in general damages, as recommended by Sir Rupert Jackson and endorsed by *Simmons v Castle* [2012].

> An increase in the level of awards for general damages will inevitably lead to increased claims spend across-the-board. Inflation has remained at a relatively low-level in recent years, and particularly so since the 12th edition, so it is hoped that any revision of the level of general damages reflects that. The details will be reported in next months Brief.



> The Bill is reflective of a number of similar initiatives, broadly aimed at ensuring that insurers 'treat customers fairly' and put the policyholder at the forefront at every point of contact. Provision of damages for late payment of claims was considered as part of the Insurance Act, but was abandoned before the final draft. It should be no surprise that government reform continues to put the insurance industry under the spotlight, so it will be imperative that insurers rise to challenge, review and improve their claims systems and procedures.

Reform

Government looks to address late payment of insurance claims

The government intends to clamp down on late payment of insurance claims with the introduction of the Enterprise Bill on 16 September 2015. The Bill proposes an implied contractual requirement on insurers to pay claims to businesses within a reasonable time. The aim of the government is to provide compensation to be paid by an insurer where a policyholder suffers additional loss because of an unreasonable delay in payment. If passed, the Bill will see the Insurance Act amended to include these provisions.

Business secretary Sajid Javid said: "The government is committed to making sure the UK continues to be the best place in Europe to do business. The Enterprise Bill will help do just that with measures to cut red tape, protect high-quality apprenticeships and deal with unfair payment practices hitting small firms."

Currently, insurers under contracts of indemnity insurance in England and Wales are under no legal obligation to pay valid claims within a reasonable time and while FCA rules require prompt claims handling, a policyholder cannot claim damages for late payment.

The proposed Bill will also provide a non-exhaustive list of matters which may be taken into account when determining a "reasonable time" for payment, including:

1. The type of insurance
2. The size and complexity of the claim
3. Compliance with any relevant statutory or regulatory rules or guidance
4. The extent to which relevant factors are outside the insurer's control

The insurer will have a defence to a claim for breach of the implied term where it had reasonable grounds for disputing the validity or value of a claim and the insurer will not be liable while a dispute is continuing. As a result, it seems unlikely that a claim for breach could succeed before the insurer confirms policy cover.

The Enterprise Bill says that the provisions for late payment will come into effect one year after the Bill is passed into law, and will then apply to insurance contracts entered into after that date. The Bill will pass through the usual parliamentary stages and is due for its second reading in the House of Lords on 12 October 2015.

Liability

EU Court of Justice says time spent travelling to and from an employee's first and last customer constitutes working time

The European Union court has concluded that employees with no fixed office who travel to visit customers are carrying out their work activity or duties over the whole duration of those journeys. The judgment says the journey of the employee to the customer appointment is a necessary means of providing their services at the premises of those customers. Failure to take those journeys into account would enable the employer to say that only the time spent at the customer premises would fall within the concept of working time. This would distort the true picture of working time and jeopardise the EU objective of protecting the safety and health of workers, through the working time regulations (no employee is obliged to work more than an average 48 hour week).

It is important to note that the ruling applies only to employees without a fixed office. The case came before the court as the employer had abolished their regional offices, but had not changed the journeys undertaken by their employee and factored-in the additional time. It was only the departure point of the journeys that had changed.

The court reached their conclusion on the basis that the employees are at the employer's disposal for the time of the journeys. During those journeys, the employees act on the instruction of the employer. During the necessary travelling time, the employee would not be able to use that time freely to pursue their own interests.

In addition, the court considered that the employee would be classed as working during the journey. Given that travel is an integral part of being an employee with no fixed office, their place of work cannot be reduced to the physical areas of his work on the premises of the employer's customers.

The fact that the employee begins and finishes their journey at their home stems directly from the decision of their employer to abolish the regional office and not from the desire of the workers themselves. Thus, requiring them to bear the burden of their employer's choice would be contrary to the objective of protecting the safety and health of workers pursued by the EU directive, which includes the necessity of guaranteeing workers a minimum period of rest.

> The number of home-based employees has increased steadily in recent times. This ruling could affect their employers, who might have previously determined the start and finish of the working day, as the time of the first and last appointment. They will now have to factor in the travel time to and from those appointments. Failure to do so could lead to breach of the working time regulations, resulting in tribunal claims and compensation. The HSE can issue improvement or prohibition notices on the employer. Also, by classifying the employee as working during those journeys that could have an impact on the employer's duty of care. It is not inconceivable that an employee's accident on the way to an appointment could be pursued as an employers' liability claim, where there is breach of duty. There might be a further issue around the determination of whether a claim falls under the motor or employers' liability policy.

Completed 30 September 2015 – written by QBE EO Claims. Copy judgments and/or source material is available from Tim Hayward (contact no: 0113 290 6790, e-mail: tim.hayward@uk.qbe.com).

Disclaimer

This publication has been produced by QBE European Operations, a trading name of QBE Insurance (Europe) Ltd ('QIEL'). QIEL is a company member of the QBE Insurance Group ('QBE Group').

Readership of this publication does not create an insurer-client, or other business or legal relationship.

This publication provides information about the law to help you to understand and manage risk within your organisation. Legal information is not the same as legal advice. This publication does not purport to provide a definitive statement of the law and is not intended to replace, nor may it be relied upon as a substitute for, specific legal or other professional advice.

QIEL has acted in good faith to provide an accurate publication. However, QIEL and the QBE Group do not make any warranties or representations of any kind about the contents of this publication, the accuracy or timeliness of its contents, or the information or explanations given.

QIEL and the QBE Group do not have any duty to you, whether in contract, tort, under statute or otherwise with respect to or in connection with this publication or the information contained within it.

QIEL and the QBE Group have no obligation to update this report or any information contained within it.

To the fullest extent permitted by law, QIEL and the QBE Group disclaim any responsibility or liability for any loss or damage suffered or cost incurred by you or by any other person arising out of or in connection with you or any other person's reliance on this publication or on the information contained within it and for any omissions or inaccuracies.

QBE European Operations Plantation Place 30 Fenchurch Street London EC3M 3BD
tel +44 (0)20 7105 4000 www.QBEeurope.com

5950GC/TechnicalClaimsBrief/September2015

Made possible by QBE