

# Location of Risk Rules

A key consideration for IPT

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# Why are LOR rules important from an IPT perspective?



# Legal Background

1

**European Court of  
Justice**

2

**EU Directives**

3

**National Legislation**

Sources for identification of location of risk rules

# ECJ–Kvaerner Case (2001)

- **Policyholder:**  
UK resident company (Kvaerner plc)
- **Coverage:**  
Non-life insurance cover of global operations of PH including NL subsidiary (John Brown Engineers en Constructors BV)
- **ECJ Ruling:**  
NL IPT applicable to the premium covering risks situated in the NL regardless of whether the premium was paid by PH or insured



# ECJ–Kvaerner Case (2001)

The ECJ was asked to rule on **three questions**

1. Can a tax authority of an EU country levy a legal entity established in another EU country for premium taxes due on a business establishment within its boundaries where the premium was paid to an insurer based in the EU?

**ECJ Ruling: Yes**

2. Does it matter if the policyholder is not the overall parent company, but some other company in the group?

**ECJ Ruling: No**

3. Does it matter if the cost of the insurance premium is not passed on (wholly or in part) to the subsidiary company?

**ECJ Ruling: No.** The method of payment or invoicing is irrelevant. Even if no intra-group charge exists the tax authority can still impose a premium tax levy.



# Solvency II Directive 2009/138/EC

## Article 157(1)

- Without prejudice to any subsequent harmonisation, every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated or the Member State of the commitment.
- Movable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be considered as a risk situated in that Member State, even where the building and its contents are not covered by the same insurance policy.

# Solvency II Directive 2009/138/EC

Article 13(13): 'Member State in which the risk is situated' means any of the following

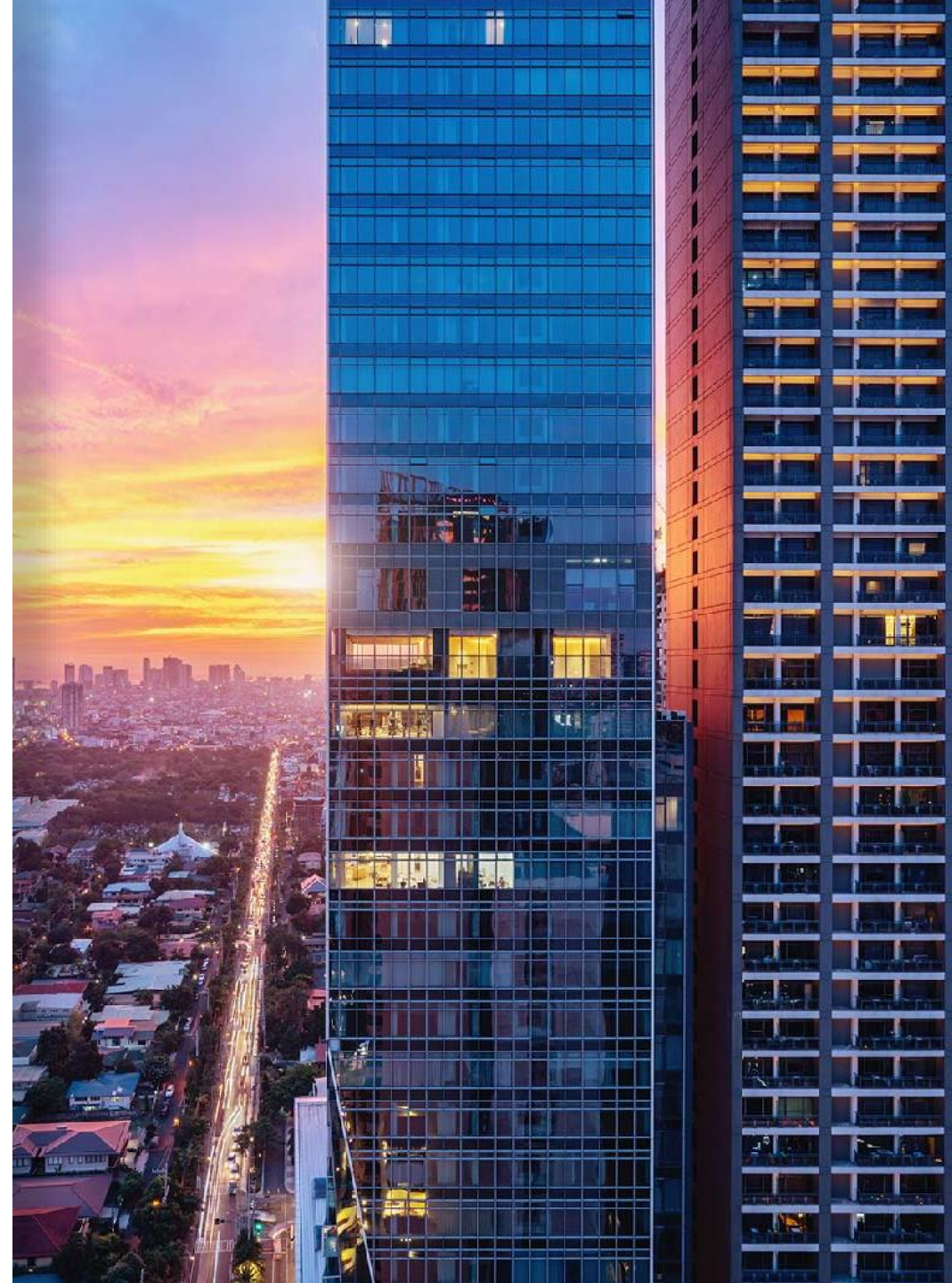
- (a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;
- (b) the Member State of registration, where the insurance relates to vehicles of any type;
- (c) the Member State where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;
- (d) in all cases not explicitly covered by points (a), (b) or (c), the Member State in which either of the following is situated:
  - (i) the habitual residence of the policyholder;
  - (ii) if the policyholder is a legal person, that policyholder's establishment to which the contract relates



# Property Risks

‘Member State in which the risk is situated’ means any of the following

(a) the Member State in which **the property is situated**, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;





# Property Risks Examples

- 1.1 Mr. Holden, whose principal place of residence is in the UK, purchases a holiday chalet in the French Alps, and takes out an insurance policy to insure the chalet and contents. Which country has jurisdiction to apply tax on the insurance premium?

*The location of risk is France – where the property and contents are situated (Art. 13 (13) (a))*

- 1.2 Mr. Holden later purchases a washing machine and fridge for his holiday home and purchases separate “extended warranty” insurance to cover these appliances. Which country has jurisdiction to apply tax on the insurance premium?

*The location of risk is the location of the property in which the movable property is kept (Art. 13 (13) (a)) i.e. France*

# Vehicle Risks

'Member State in which the risk is situated' means any of the following:

(b) the Member State of registration, where the insurance relates to vehicles of any type;

# Vehicle Risks

Variation in local interpretation of 'vehicles of any type' leading to uncertainty:

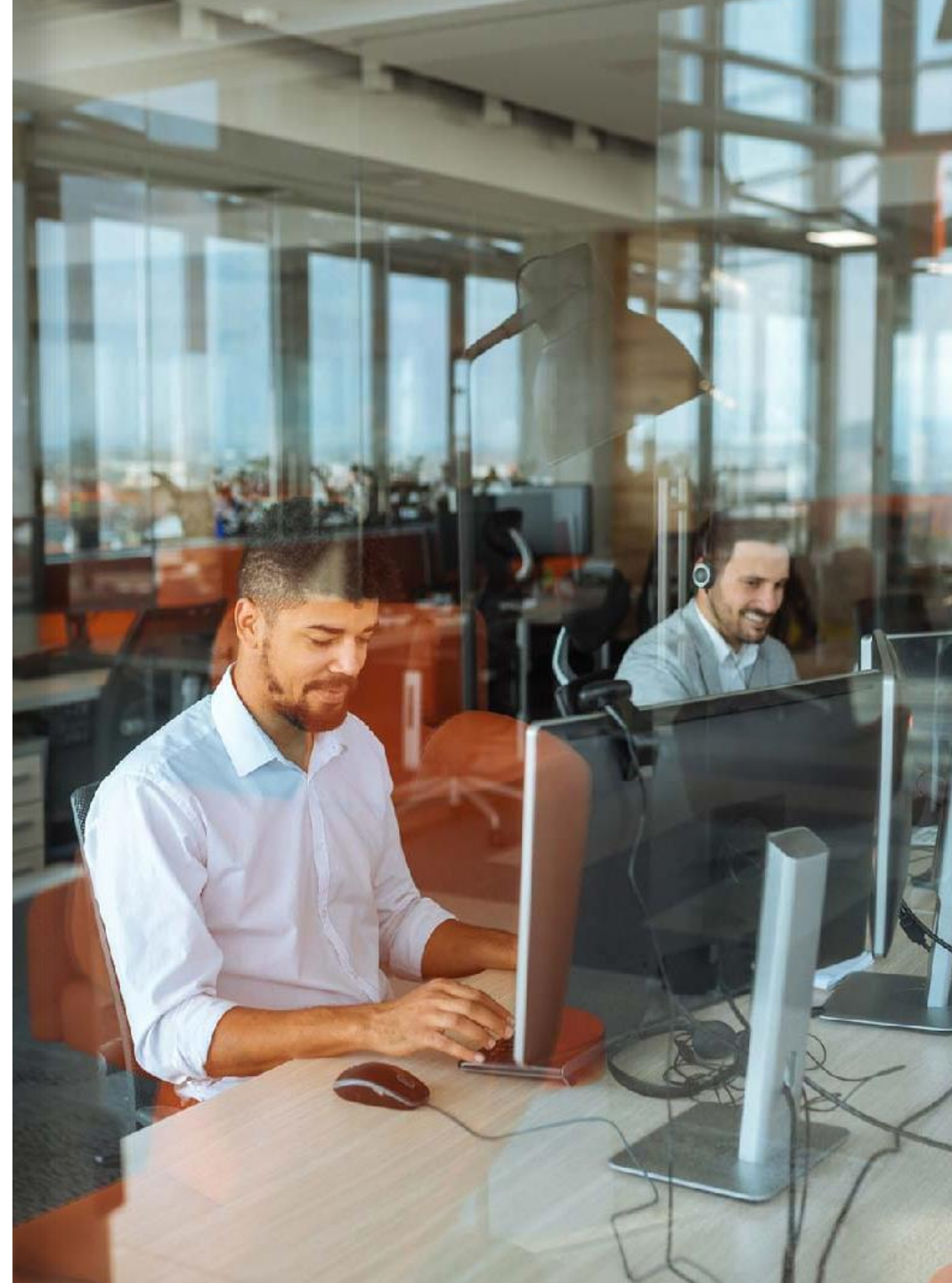
- Denmark, Greece and Slovenia: a means of transportation
- Malta: motor vehicle only



# Travel Risks

'Member State in which the risk is situated' means any of the following:

(c) the Member State where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;



# Travel Risks Examples

- 2.1 Mr. and Mrs. Long, who are habitually resident in Ireland, belatedly purchase travel insurance during their holiday in Germany. The policy covers their German holiday which has a duration of 2 weeks. Which country has jurisdiction to apply tax on the insurance premium?

*As the policy is for less than 4 months the location of risk is the Member State in which Mr. and Mrs. Long bought the policy Art. 13 (13) (c) i.e. Germany.*

- 2.2 Mr. and Mrs. Long, who are habitually resident in Ireland, are travelling through France to get to their holiday destination in Germany. They purchase travel insurance whilst they are travelling through France. The policy covers their German holiday which has a duration of 2 weeks. Which country has jurisdiction to apply tax on the insurance premium?

*As the policy is for less than 4 months the location of risk is the Member State in which Mr. and Mrs. Long bought the policy Art. 13 (13) (c) i.e. France.*



## All Other Risks

'Member State in which the risk is situated' means any of the following:

(d) in all cases not explicitly covered by points a, b or c, the Member State in which either of the following is situated:

- (i) the habitual residence of the policyholder;
- (ii) if the policyholder is a legal person, that policyholder's establishment to which the contract relates



# All Other Risks Examples

- 3.1 Mr. and Mrs. Long, who are habitually resident in Ireland, belatedly purchase travel insurance during their holiday in Germany. The policy covers their German holiday and travel plans for the next 12 months. Which country has jurisdiction to apply tax on the insurance premium?

*As the policy is for 12 months the location of risk is the Member State in which Mr. and Mrs. Long are habitually resident (Art. 13 (13) (d) (i)) i.e. Ireland.*

- 3.2 Magic Machines, a UK manufacturer of washing machines, purchases a Product Liability policy. Magic Machines makes sales across from the UK to UK, France and Ireland. Which country has jurisdiction to apply tax on the insurance premium?

*The location of risk is the establishment of the policyholder (Art. 13 (13) (d) (ii)) i.e. the UK.*

# All Other Risks Examples

- 3.3 A haulage company based in Belgium pays a premium to cover the loss/damage to goods that it is transporting to a customer located in Portugal. The goods will travel via France and Spain. Which country has jurisdiction to apply tax on the insurance premium?

*The location of risk is the establishment of the policyholder (Art. 13 (13) (d) (ii)) i.e. Belgium*

# **ECJ–A Ltd Case (2019)**

- **Policyholder**

Prospective company based outside of Finland looking to make acquisition of Finnish company

- **Coverage**

Non-life insurance cover related to company acquisitions (primarily warranty and indemnity insurance and civil liability insurance)

- **ECJ Ruling**

When an insurance company established in a Member State offers insurance in respect of risks which arise as part of a company acquisition, an insurance contract concluded in that context is subject exclusively to the insurance premium tax regime in the Member State where the policyholder is established



# Switzerland

Non-EU/EEA Member State

Does not follow default EU Location of Risk rules

Key considerations:

- Domestic insurance – domestic portfolio
- Location of policyholder

The insurance premium payment is subject to Swiss Stamp Duty:

- a) provided the premium payment relates to the domestic portfolio of an insurer that is supervised by the Swiss insurance regulator or insurance written by domestic public insurers
- b) If the Swiss policyholder takes out insurance with a foreign insurer that does not fall under the Swiss supervision

# Liechtenstein

Non-EU Member State but part of EEA

By default follows Swiss Stamp Duty rules

Key considerations:

- domestic insurance – domestic portfolio
- Location of policyholder
- Location of Risk

Article 67 of Liechtenstein Tax Law (Steuergesetz 640.0) states that where the Swiss Stamp Duty law does not apply then Liechtenstein Stamp Duty could apply

Article 68 of Liechtenstein Tax Law refers to LI SD being applicable on insurance premium payments related to risks located in Liechtenstein

Article 70 of Liechtenstein Tax Law refers to the liable party for LI SD as the insurance company conducting insurance in LI

Article 107 of Liechtenstein Tax Law mentions a requirement for a foreign insurer to appoint a local fiscal representative

# Key takeaways

1

## **IPT is not harmonised**

- Consider local IPT law

2

## **Risk determines the criterion**

- Property
- Vehicle
- Holiday or travel
- Other

3

## **Non-EU/EEA region**

- Local rules typically differ from EU/EEA LoR rules



# Q&A





SOVOS

**Thank you.**

