HMRC - IPT04320 - Establishing The Location Of A Risk

For the purposes of determining the location of a risk The Finance Act 1994, Schedule 7A paragraph 8(2) states that:

The question of whether a risk is situated in the United Kingdom shall be determined in accordance with regulations made under section 424(3) of the Financial Services and Markets Act 2000; but in determining that question as respects a contract which related to a building it shall be irrelevant whether or not the contract also covers the contents of the building.

The following is the legal basis for determining the location of risk, as outlined above. The regulations referred to in Section 424(3) of the FSMA 2000, are contained in Article 2(2) of the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 SI 2001 2635, as follows:

References in this Act to the member State where the risk is situated are-

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

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

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

(d) in a case not covered by paragraphs (a) to (c)-

(i) where the policy holder is an individual, to the member State where he has his habitual residence [at the date when the contract is entered into];

(ii) otherwise, to the member State where the establishment of the policyholder to which the policy relates is situated [at that date].

Therefore, the location of specific types of risk is as follows:

For buildings or for buildings and their contents: the location of the risk is in the member state in which the property is situated. Paragraph 8(2)(a) to Schedule 7A to the Finance Act 1994 provides that, for the purposes of IPT, article 2(2) of SI 2001/2635, should be read so that the location of risk for contents insurance (whether or not the contents are covered by the same policy as that insuring the building) is in the member state in which the building in which the contents are housed is situated.

For vehicles: the location of the risk is in the member state in which the vehicle is registered. Vehicles include ships and vessels (including hovercraft), aircraft and land vehicles. Where any vehicle is not required to be registered, the risk is located as described in (d) below. If an insurer has no record of where insured vehicles are registered you may agree a different way of determining the location of the risks (for example, the “garaged” address), provided that this gives a fair result.

For travel and holiday risks where the duration of the policy is for not more than four months: the location of risk is where the policy is taken out. For example, if a person travelling on holiday from the UK to Spain takes out a policy before they travel, then the location of risk is in the UK. However, if they take the policy out when they arrive at their destination then the location of risk would be Spain. If a policy is taken out by mail order, post, telephone or the Internet, the location of risk is where the policyholder is at the time the contract is taken out. It does not matter where the insurer or broker is based.

For insurance which is not buildings, contents, vehicles or short-term travel the location of the risk is:

where the policyholder is an individual, in the member state where they are habitually resident at the date they entered into the contract;

otherwise, in the Member State where the establishment of the policyholder to which the policy relates is situated.

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