NCN: [2021] UKFTT 7 (TC)

TC07992

Appeal number: TC/2019/00348

Insurance Premium tax
– exemption for premiums related to risks situated outside the UK – application of FSMA 2000 Regs 2001/2635 for periods before 2009; application of 2009/3075 for later periods- reading in provisions of Second Directive.
-Insurance relating to operations in the North Sea: whether risk insured was only financial or related to buildings; whether related to any extent to an establishment outside the UK – whether a ship could be an establishment

FIRST-TIER TRIBUNAL
TAX CHAMBER

TARTARUGA INSURANCE LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE CHARLES HELLIER

Sitting in public by video link on 24, 25 and 26 November 2020

James Henderson instructed by Deloitte LLP, for the Appellant

Alice Carse, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondent

DECISION

1. In the period 1 May 2016 to 31 January 2018 Tartaruga Insurance Ltd ("TIL") insured members of the Subsea 7 Group ("S7") against certain risks associated with its operations in the North Sea. The question which arises in this appeal is the extent to which those insurance contracts related to risks situated outside the UK (I use "UK" to include its relevant territorial waters). To the extent they did insurance Premium Tax ("IPT") was not due; but if they related only to UK risks IPT was due by reference to the whole of the premiums paid to TIL.

2. The appeal arose in the following way. After an internal review TIL realised that some IPT should have been accounted for by reference to the premiums it had received from S7. It therefore wrote to HMRC on 8 June 2017 explaining the activities of S7 and the framework in which the insurance contracts had been made. It set out its analysis of the application of the IPT legislation and then concluded that only a relatively small portion of each insurance contract related to risks situated in the UK with the bulk of each contract relating to risks situated outside UK territorial waters in the North Sea (being in particular risks to buildings (oil rigs and pipes) in the North Sea). It calculated that some £73k in tax was due.

3. There followed some correspondence with HMRC. HMRC formed the view that the whole of each contract related to risks situated in the UK and assessed TIL for some £1,443k. TIL appeals against those assessments.

The legislative provisions.

4. Section 49 Finance Act 1994 provides that IPT shall be charged on the receipt of a premium on a "taxable insurance contract". A taxable insurance contract is defined in section 70 to mean any contract of insurance unless "it falls within one or more of the paragraphs of Part 1 of schedule 7A". The matters in those paragraphs are known as "exempt matters" (section 69(12)).

5. Part 1 schedule 7A contains 15 paragraphs. Paragraph 1 relates to contracts of reinsurance and paragraph 2 to contracts which are "exclusively" long-term insurance. The remaining 13 paragraphs all begin with the words "a contract falls within this paragraph if it relates only to ...". The use of the word "only" (or "exclusively" in paragraph 2) in these paragraphs suggests at first blush that a contract which relates to more than one of those paragraphs or which relates both to something within such a paragraph and something outside any of them cannot benefit from the exemption.

6. However, section 69 sets out a mechanism for determining the chargeable amount where a contract provides cover for one or more exempt matters as well as cover for one or more non-exempt matters. In such circumstances it provides (in subsection (11)) for an attribution of part of the premium to the exempt matter and part to the non-exempt matter on a just and reasonable basis, and for IPT to be charged by reference only to the premium attributable to the non-exempt matter. In the light of this provision the use of the word "only" in the opening words of each paragraph of schedule 7A must

be construed so as to define the part of the contract which relates to the prescribed matters, so that when such a part can be identified IPT is not chargeable on the part of the premium which, on a just and reasonable basis, relates only to the exempt matter.

7. Paragraph 8(1) schedule 7A provides that a contract falls within that paragraph if it relates only to a risk which is situated outside the UK, and paragraph 8(2) ("paragraph 8(2)") provides that the question of whether a risk is situated "in the UK shall be determined by regulations made under section 424(3) Financial Services and Markets Act 2000 ("FSMA")".

8. Thus one is instructed to use such regulations to determine whether the risk is situated in the UK, and if the answer is no, it will be situated outside the UK for the purposes of paragraph 8(1).

9. Section 424(3) FSMA does not directly concern itself with the location of a risk but relates to the selection of the national law to be applied to a contract of insurance: it provides that such law is to be determined "if [the contract] is of a prescribed description, in accordance with regulations made by the Treasury".

10. The period to which the assessments relate may be divided in two: (i) that up to 17 December 2009 and (ii) that afterwards. The regulations made by the Treasury in these two periods were different.

(1) The period up to 17 December 2009.

11. In the period ending on 17 December 2009, there were in force regulations made under FSMA which contained provisions which, for the purposes of FSMA, determined the law applicable to an insurance contract by reference, inter alia, to the State where the risk covered by a contract of insurance was situated. These were the Financial Services and Markets Act 2000 (Law applicable to Contracts of Insurance) Regulations 2001/2635 (the "2001 Regulations"). Regulation 2(2) of these regulations provided:

> "References to the EEA State where the risk covered by a contract of insurance is situated are to -
>
> (a) if the contract relates to buildings or to buildings and their contents (in so far as the contents are covered by the same contract of insurance), the EEA State which in which the property is situated;
>
> (b) if the contract relates to vehicles ...
>
> (c) if the contract covers travel or holiday risks ...
>
> (d) in any other case -
>
> (i) if the policyholder is an individual ...
>
> (ii) otherwise, the EEA State in which the establishment of the policyholder to which the contract relates is situated on that date."

12. There are two ways of reading this provision into paragraph 8(2) schedule 7A. Take the example of a company established in the UK only which insures against risks to a New York office block which it owns.

13. On the first approached one starts with the question posed by paragraph 8(2): is the risk situated in the UK? Regulation 2(2) then tells you that references to the risk being situated in the UK (an EEA State) are: "if the contract relates to buildings… the EEA State in which" they are situated. But there is no such EEA State because the buildings are in New York. The contract does not relate to vehicles or travel, and so one is left with paragraph (d), and the result is that the risk is to be treated for the purposes of paragraph 8(2) as situated in the UK, where the policyholder is established.

14. The second approach is to replace "EEA State" in the application of Regulation 2(2) for the purposes of paragraph 8(2) with "State". If the word "EEA" is so replaced, then regulation 2(2) tells you that, because subparagraph (a) will now be satisfied, references to the State in which the risk is situated is the USA; as a result there is no need to consider (d). On this approached the risk will be situated in the USA and so outside the UK for the purposes of paragraph 8(1).

15. Both Miss Carse and Mr Henderson supported the second approach. They say that on a purposive interpretation it must be the case that if an insured building is outside the UK the situation of the risk must be there too, thus regarding regulation 2(2) as a tool rather than a formula to work out whether or not a risk is situated in the UK.

16. Paragraph 8(2) requires the situation of a risk to be determined "in accordance with" the FSMA regulations, not "by" such regulations. Those words permit the conclusion that the scheme of the regulations, rather than the precise words by which the regulations address the matter, should be applied for IPT. Regulation 2(2) does not provide a general rule: it is clearly intended to apply where there is a potential conflict as between two EEA States in the context of determining whose law should prevail for the construction of an insurance contract. It should not therefore be applied literally when the choice is between an EEA Sate and a non-EEA State or no State at all. Instead the scheme "in accordance with" which paragraph 8(2) operates must be intended to be that which locates the situation of the risk in the State of the buildings if there are buildings, then similarly for vehicles and travel and lastly in the State of the policyholder's relevant establishment.

17. At the time the 2001 Regulations were promulgated, the Second Council Directive had been adopted. This contained provisions in relation to tax on insurance premiums by reference to a definition of where the risk was situated. I set out its provision below, but the definition was substantially the same as that in the 2001 Regulations.

18. Thus in the period up to 17 December 2019, I conclude, in concurrence with Miss Carse and Mr Henderson, that the risk is situated outside the UK if or to the extent that the contract relates to buildings in the North Sea outside the UK's territorial waters, or otherwise relates to an establishment of S7 in the North Sea outside the UK.

19. There is a definition of establishment in the 2001 Regulations to which I shall return after the next section.

(2) The period after 17 December 2009.

20. On 17 December 2009 the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009 SI 2009/3075 (the "2009 Regulations") came into force. Regulation 2(1) of those regulations provided that the 2001 Regulations did not apply to contracts of insurance entered into on or after 17 December 2009.

21. But the 2009 Regulations did not provide any replacement for Regulation 2 of the 2001 Regulations for contracts entered into after that date. As a result, reading the 2009 Regulations literally, from that date there were no "regulations made under section 424(3) FSMA" in force which determined the situation of a risk for the purposes of paragraph 8(2).

22. Miss Carse and Mr Henderson were again united in their response to this absence. They say that the hole in the statutory provisions can be plugged by the provisions of EU Regulation 593/2008 (the "Rome I" Regulations), which had direct effect and came into force on the same date (17 December 2009) as the 2009 Regulations stopped the 2001 Regulations from applying to new contracts.

23. In this context they note that the Explanatory Memorandum on the 2009 Regulations laid before Parliament indicates that the purpose of the 2009 Regulations was to implement the "law applicable to contractual obligations" in Rome I. The memorandum explains at paragraph 7 that Rome I replaces a 1980 Convention with rules which are the same across the EU for determining the national law applicable to contractual obligations; and that the rules are designed to enable national courts to select the national laws which are suitable for determining disputes with a cross-border dimension. It is noted that insurance contracts were excluded from the 1980 convention but that specific provision is made in Rome I.

24. Article 7 of Rome I deals with insurance contracts. It provides that it:

> "shall apply to contracts referred to in paragraph 2 whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States..."

25. Article 7(2) first subparagraph related to certain large risk contracts.

26. Article 7(2) second subparagaph to 7(5) deal with the choice of applicable law for contracts to which the Article applied – such choice being dependent inter alia on where the risk was situated. Article 7(6) provides that:

> "*for the purposes of this Article* the country in which the risk is situated shall be determined in accordance with article 2(d) of the Second Council Directive ...".[my italics].

27. The purposes of Article 7 do not relate to the taxation of insurance premiums. Nor do those of Rome I: its purpose is spelled out in its recitals. It is to promote the compatibility of rules and Member States concerning conflict of laws and jurisdiction.

28. Although Rome I has direct effect in the UK (the UK's acceptance having been notified in accordance with article 4 of protocol 21 to the Treaty of Rome thus abrogating recital (45)) its effect is limited to matters within its purpose, Not only do the words of Article 7(6) deny its relevance to IPT but the Regulation as a whole does not make rules which take effect in domestic law in other contexts. In particular it has no direct effect in the field of a domestic tax.

29. I conclude that Rome I does not plug the hole left by the 2009 Regulations.

30. Article 2 of the Second Directive contains certain definitions "for the purposes of this Directive". Article 2(d) provides:

> ""Member State where the risk is situated" means
>
> - the Member State in which the property is situated where the insurance relates to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;
>
> - [relates to vehicles]
>
> - [concerns policies covering travel or holiday risks]
>
> - ... if the policy holder is a legal person, the Member State where the latter's establishment, to which the contract relates, is situated in all cases not explicitly covered by the foregoing indents."

31. It will be seen that these words are substantially replicated in the 2001 Regulations.

32. The Second Directive, however, had a wider purpose than Rome I. One of its purposes was "to facilitate the effective exercise of freedom to provide services" in the insurance market but the antepenultimate recital referred to the imposition of tax on insurance transactions by Member States and the benefit of a system under which tax was levied by reference to the Member State in which the risk was situated. Article 25 and provided that "every insurance contract ... shall be subject exclusively to the indirect taxes ... on insurance premiums in the Member State in which the risk is situated within the meaning of article 2 (d) ...".

33. The Second Directive was in effect until 31 December 2015, and thus in effect at the time the 2009 Regulations were promulgated. As a result it seems to me that there should be read into the 2009 Regulations words to the effect that for the purposes of paragraph 8(2) Sch 7A the provisions of Article 2(d) of the Second Directive should apply.

Summary.

34. I conclude that both before and after 17 December 2009 the location of the situation of an insured risk was to be determined in accordance with the rules in the 2001

Regulations which should be construed in accordance with, but in any event have the same substantial import as, Art 2(d) of the Second Directive.

Establishment

35. Article 2(c) of the Second Directive contained a definition of establishment as

> "the head office, agency or branch of an undertaking".

36. I have set out Article 2(d) above.

37. Article 3 provided that for the purposes of the Directive

> "any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch" even if it did not take that form "but merely consists of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking"

38. *Kvaerner v Staatssecretaris van Financien* [2001] STC 1007 concerned premiums paid by a UK company which related to the activities of a Netherlands subsidiary. The UK company argued that the Netherlands subsidiary was not an establishment within Art 2(d) so that the result of applying Art 2(d) was that the risk was to be treated as situated in the UK, not the Netherlands, and the premiums were not therefore taxable in the Netherlands.

39. The Court held that Art 2(c) was applicable only to determining a place of establishment of the insurer and was therefore irrelevant. The only question therefore was whether a subsidiary could fall within Art 2(d) fourth indent. The Court said, at [43,] that in the interpretation of "establishment" in 2(d) final indent, the context and objectives of the Directive had to be taken into consideration. It was clear [44] that the Directive was intended to propose

> "a solution enabling the state where the risk is situated to be determined on the basis of concrete and physical, rather than legal criteria, The purpose was that there should be a concrete factor corresponding to each risk which would allow it to be localised in a specific member state."

40. That was seen by the references to buildings, the place of registration of a vehicle and the provision of travel insurance. The object of 2(d) final indent was to lay down a residual rule [46]:

> "To that end, emphasis is placed on the place where the activity whose risk is covered by the contract is exercised. For that purpose the legislature had recourse to the criterion of the establishment to which the contract relates..."

41. At [52] the Court reiterated the aim of the legislation to ensure so far as possible that the power to tax should be recognised on the "basis of concrete and objective criteria ignoring the legal situation of the policyholders and concentrating on the location of the activities the risks of which are insured". On that basis a subsidiary could be an establishment.

42. The Court did not refer to Art 3 in its consideration of Art 2(d) but in the course of its judgment noted that the words of Art 3 followed the earlier judgement of the Court in *EEC v Germany* in which the Court had to determine what the type of presence was "sufficiently permanent" to evidence the establishment of an undertaking.

43. Miss Carse infers that the proper approach to construing "establishment" is drawn from a focus on the carrying on of business: the fact that a company has a building in a particular location is not enough for it to be an establishment. I agree.

44. The 2001 Regulations were promulgated after the *Kvaerner* decision. They provided a definition of establishment:

> "establishment", in relation to a person ("A") means -
>
> (a) A's head office;
>
> (b) any of the A's agencies;
>
> (c) any of A's branches; or
>
> (d) any permanent presence of A in an EEA State, which need not take the form of a branch or agency and which may consist of an office managed by A's staff or by a person who is independent of A but has permanent authority to act for A as if he were an agency."

45. Again, I regard the definition of establishment in this Regulation as applying in the context of paragraph 8(2) with the excision of "EEA" from paragraph (d). Thus for Regulation 8(2) purposes if the contract (not being for buildings, vehicles or travel) relates to an agency, branch or other permanent presence, for example, in Zambia, the risk for IPT purposes is to be treated as not being in the UK.

46. Miss Carse and Mr Henderson agree that this 2001 definition and Article 3 of the Second Directive should be read consistently.

47. That 2001 definition draws, in its reference to A's head office, an agency or branch, on Art 2 (c) of the Directive, and in its reference to permanent presence to Article 3. Given that Art 25 of the Directive refers only to Art 2(d), and the Court's decision in *Kvaerner* that Art (c) was not relevant to the establishment of an insurer, the presence of "head office…agencies…branches" in the 2001 Regulations is surprising (although the replication in para (d) of Art3 is not because it is stated to apply for the purposes of the Directive). For present purposes, in which we are not concerned with branches or agencies, however, I agree with Mr Henderson and Miss Carse.

48. Thus I the period up to 17 December 2009 the definition of establishment in the 2001 Regulations, read to be consistent with the Second Directive, applied and (for reasons similar to those in para 33 above, in the period thereafter the provisions of Art 2(d) and 3 should be read in to the 2009 Regulations for the purposes of Paragraph 8(2) with the same result.

49. In the context of the meaning of "establishment" I was referred:

(1) in the context of UK corporation tax, to section 1141 CTA 2010, which defines a permanent establishment as, inter alia, a fixed place of business through which the business of the company is carried on, and provides that this includes an oil well and a building or construction site;

(2) in the context of VAT, to Articles 44 and 45 of the VAT Directive which locate the place of supply of services at the place where the supplier has "established his business", or if they are supplied from a fixed establishment the place of that establishment; and Art 10 of Regulation 282/2011 which provides that the place where a business is established is the place where its central administration is carried out having regard to where essential decisions and general management take place, and Art 11 of the same regulation which defines a "fixed" establishment as an establishment with a sufficient degree of permanence and a structure in terms of human and technical resources to enable it to provide its services;

(3) to Art 5 of the OECD model double tax treaty which defines permanent establishment as a fixed place of business including an oil well and a building or construction site, "but only if it lasts for more than 12 months".

50. These provisions deal with other taxes and their precise terms are of limited assistance. They also address what is a *permanent* or *fixed* establishment, words which add a further layer of solidity to the word "establishment". Nonetheless there is an implication of a degree of permanence in that word which was recognised by the ECJ in *Germany* and is reflected in the phrase "permanent presence" in Art 3. There is also a recognition that an oil well or construction site can be a permanent establishment, and a fortiori an establishment.

51. I draw the following conclusions:

(1) An establishment must be physical and be a place where activities of the enterprise are conducted;

(2) The examples in Art 2 (a), (b) and (c), the reference to branch or agency in Art 3, and the recognition in *Kvaerner* that a subsidiary in another state could be an establishment all indicate that an establishment need not be a place where strategic or central management or administration is conducted.

(3) An establishment must have some degree of permanence. But it does not have to have the degree of permanence which the addition of "fixed" would require. Generally it seems to me that a set up lasting 12 months or more would have that quality.

(4) There is no requirement that an establishment be in one fixed geographical location. So long as there is a longterm gathering of the requisite degree of operational resource, the movement of the place of gathering does not prevent it from being an establishment.

(5) A longterm construction site can be an establishment since it has a degree of permanence and is a concrete location where the activities of the business are carried on.

The Facts.

52. I heard oral evidence from: (1) Christopher Hollis, a director of INDECS, an insurance consulting firm which had worked with S7 and TIL for over 10 years; (2) Paul Simons, a vice president in the S7 group with responsibility for operations in the North Sea, and (3) Nathalie Louys, general counsel for S7 and a director of TIL. I had a number of other documents including a witness statement from Claire Bromley, which concerned the detail of the IPT calculations on various bases. I find as follows.

(1) The business of S7.

53. The S7 group is an engineering and construction group providing subsea to surface engineering works to the oil and gas industry. For the most part its work in the North Sea involves the installation of platforms and pipelines (I use "pipeline" to cover all the paraphernalia which goes with one). The vast majority of its business involves laying and connecting undersea pipelines.

54. These are no simple, small or quick tasks. The North Sea is not a predictable or welcoming environment and the tasks performed are not uniform. The pipes are not small and easily handled: they vary from 4 feet to 2 inches in diameter and may be up to 50 km in length; they may be laid on the seabed, in a trench dug for the purpose or on concrete mats. They may be laid from a vast wheel on the deck of a ship or welded in sections before being fed into the sea. They may be towed out to sea in sections many miles long) and then sunk in the desired position on the seabed. They may be at depths from 30 m to 3 km. The pipes may carry oil and gas from undersea wellheads to a manifold - a structure into which many pipes join and which can regulate the flow. Such manifolds may be bigger than a house or weigh (only) 100 tons. Pipes are laid from the welhead to the manifold, and from the manifold or wellhead to an oilrig where they are attached to the undersea structure of the rig. Pipes may also carry communications, control and power supplies to undersea structures such as manifolds.

55. S7 has offices in London and Aberdeen where the technical analysis and design for a project is undertaken by a team of engineers. That is also where accounting, administration and strategic development take place. Once the design, specification and programme of construction for a project have been settled by the onshore team and any onshore construction work has been undertaken, the project will be handed over to the team which will work aboard an S7 ship to lay test and certify the pipeline in accordance with the specifications developed onshore. Of S7's 11,000 staff about a half work only onshore but more hours are spent at work offshore.

56. The ships are also large and complex. The three examples I was shown had helipads, pressurised diving suites, very large cranes, pipe storage facilities or reels, offices, and accommodation for between 84 and 355 people including gyms and TV rooms. On board, in addition to those who undertook physical tasks (welders, divers, cooks and deckhands) there would be a management team of professionals who were responsible for the installation. The management team would comprise between 10 and 50 people including the ship's officers. There would be a chief engineer and many supervisors and

management teams to direct operations. The ships worked, weather permitting, 24 hours a day in two shifts so the management team at any time would be up to 25.

57. Many of these managers would have offices adjoining their cabins; these were equipped with a desk, video screens and communications equipment. The project was also managed in control rooms staffed by several people and equipped with multiple video links.

58. While on a campaign for a project a ship could be offshore for many months at a time. After a period a ship could leave the site of the works to pick up more pipe, other stores and change the crew, and then return to the site of operations. Ships could remain on the site for 2 to 3 months, being supplied by other vessels and having their crew ferried back and forth by helicopter. For smaller ships, the trips back to port to restock may have been more frequent. The North Sea weather meant that work was not always possible and the periods of presence over the part of the seabed where a pipe was being laid would not always be continuous. The completion of a project would generally take up to two years.

59. Some pipelines are bundled (one large pipe containing a number of smaller ones). These are manufactured onshore and are very very long. They are towed out to sea in enormously long sections and then flooded and sunk. In this case most of the construction work would be onshore. For other, more common, single pipelines most of the physical construction work would be undertaken offshore.

60. Mr Simons described all the construction risk in these projects as being offshore because that was where the testing, surveying, welding and pipeline commissioning took place, and where the environment of the North Sea and moving vessels increased the possibility of an accident. That was also where they saw problems occurring in operations. He accepted, however, that there was onshore risk and that where long pipelines were manufactured on land and towed out to sea there was probably more risk onshore during final fabrication.

61. In the four years to November 2018 S7 had made 15 claims under its policies with TIL. All but two of them related to operations offshore.

(2) the contractual framework.

62. S7 contracts with oil and gas companies (I shall call them "oil companies") for the delivery of its projects. The terms of the contracts are based on an industry standard contract known as the LOGIC contract. Each actual contract incorporated various amendments and changes to the LOGIC contract, but the basic terms of such contracts as regards liability, indemnity and insurance would usually have been those of the LOGIC contract.

63. I was shown examples of contracts but was not shown all the contracts in relation to which the premiums were paid which gave rise to this appeal.

64. The terms of the LOGIC contract differ from ordinary construction contracts in their allocation of risk. I note this below when I consider the rights and obligations arising

under the contracts but the starkest difference is that the oil company indemnifies the contractor (S7) against the damage caused to the oil company's existing property by S7. This practice evolved because the contractors are much smaller than the oil companies and were not wealthy enough to back an indemnity to the oil companies for such matters, and the oil companies did not want to get entangled in claims under their contractors' insurance policies.

65. The LOGIC contract stated that S7 was obliged to furnish and install the relevant works and, until the contract was accepted as finished, stated that responsibility for loss or damage to the work lay on S7 so that it would be liable to arrange repair or effect replacement.

66. The contract stated that it required the contractor (S7) to insure against specified risks detailed in clause 23 of that contract. It also required the oil company to arrange "Construction All Risks insurance" ("CAR Insurance") for the benefit of itself and the contractor, but it permitted the oil company to give the contractor an indemnity in lieu of the benefit of such a policy. The terms of such insurances or indemnity would be detailed in an Appendix to the contract. This Appendix would in particular specify deductible amounts in relation to claims for particular risks – thus in one example before me, $500k for onshore fabrication, $1m for transit and $1.5m for installation and hook up.

67. Where oil companies insured a project with a third-party insurer this was also generally done under the standard terms of the "CAR" (or WELCAR) contract, which again included unusual terms, including the waiver by the insurance company of its rights of subrogation against contractors such as S 7. Ms Louys told me, and I accept, that the contract used to be called a Builders All Risks policy.

(3) TIL

68. TIL was incorporated, and until 2015 was resident, in Bermuda. In 2015 it moved its residence to the Isle of Man. It is part of the S7 group and provided insurance only to members of that group. It is what is known as a "captive insurance company".

69. Between 2007 and 2015 TIL entered into contracts of insurance with S7. In contrast to the CAR contract, these contracts were fairly simple three or four page contracts, to which short endorsements were added to deal with each project as it arose.

70. Both parties to the contracts were aware of their context, namely the provisions of the relevant LOGIC and CAR based contracts and the nature of the project to which the an endorsement related.

The rights and obligations under the relevant contracts.

71. There were four contracts in relation to any project which were relevant to determining where the risks insured by TIL were situated. They were: (i) the contract for the undertaking of the project (which I have taken as incorporating the terms of the

LOGIC contract), (ii) the CAR insurance policy with third-party insurers, (ii) the terms of the insurance contracts taken out by S7 in pursuance of clause 23 of the LOGIC contract, and (iv) the insurance contract between S7 and TIL.

72. The precise terms of the LOGIC and CAR based contracts were different for each project. In what follows I have assumed that the actual contracts followed the terms of those standard contracts as far as material to this decision. I was not shown a copy of any of the contracts taken out in pursuance of clause 23 of the LOGIC contract. As a result, I have not been able to say precisely what liabilities remained with S7 after the effects of the indemnities given in the LOGIC contract and the effect of the cl 23 insurances. Thus I have not been able to be precise about the cover under the CAR based contract.

(1) the LOGIC contract: the standard conditions for a project

73. Under this contract the programme of work to be done and the detail of the relationship between the oil company and the contractor are set out.

74. Clause 24.1 provides that the contractor shall be responsible for the property arising from the contract (this is termed the 'permanent work'), and "in the event of loss or damage to the … permanent work…shall if instructed …reconstruct, repair or replace the same" (there is an exclusion for damage caused by War, the oil company's negligence and force majeure). Thus the obligation to repair, and the cost of repair, lay upon the S7.

75. Clause 22 of the contract contains indemnities:

> (1) in 22 .1 the contractor indemnifies the oil company against (a) damage to the contractor's property, (b) personal injury to the contractor's employees and (c) personal injury to third parties caused by the contractor's negligence;
>
> (2) in 22.2 the oil company indemnifies the contractor against damage to (a) the oil company's property other than the permanent work, (b) personal injury to the oil company's employees, (c) personal injury to third parties caused by the oil company's negligence and (d) damage to third parties' oil and gas facilities within 500m of a place where a vessel is working on the installation of new infrastructure.

76. The effect of these indemnities is that the oil company is liable for damage caused by the contractor to the oil company's existing property and personnel, and also liable for damages caused by the contractor to third parties' property in the vicinity of a work site. The contractor is liable only: for damage to its own property and personnel, for damage to third-party property away from the worksite, and to repair and complete the work if what has been installed is damaged.

77. Clause 24.1 expressly requires the contractor to repair and replace any damage to the property (e.g. the pipeline) it has been constructing, but (24.2) if the damage arises from War or negligence of the oil company there is a mechanic for the oil company to pay for the restoration.

78. Clause 24.3 provides that the oil company "shall arrange a Contractors All Risk insurance" (a “CAR” policy) and that:

> "liability for deductibles payable under such insurance shall be for the account of the contractor".

79. The insurance is to be for the benefit of the oil company and the contractor and is to contain a waiver of subrogation rights against the contractor. The terms of the policy are to be set out in an appendix.

80. Clause 24.5 provides that the oil company may elect, instead of arranging such insurance, to provide an indemnity to the contractor. The indemnity would be for the costs in excess of an amount corresponding to what would have been the deductible under the CAR policy.

81. Under clause 25 the oil company indemnifies the contractor against the oil company’s own consequential losses relating to the work, and the contractor indemnifies the oil company against the contractor’s consequential losses.

(2) The CAR insurance policy

82. The standard terms of a CAR policy are those of the WELCAR 2001 standard terms offshore contractors project policy. This insures risks under two headings, Section I, physical damage, and Section II, Liability. Under Section I of the policy the insurers waive any right to subrogation. The insurance is written for the benefit of the oil company and the contractor.

83. Under Section I the assureds are insured against all risk of physical loss or damage to all the property which (i) becomes, or is destined to become, part of the completed work, (ii) is used in its creation and (iii) consists of temporary works and plant and machinery which may or may not become incorporated into the project to the extent separately scheduled to the CAR policy. The cover excludes ships, aircraft and certain equipment owned by the contractor which does not become part of the installation. Clause 4 declares that the "underwriter’s liability shall be subject to the deductibles": the deductibles are to be set out in amounts in respect of the occurrence of particular risks to be specified in an appendix or annex to the policy.

84. Under Section II the assureds are insured against legal and express contractual liability for bodily injury or property damage. It is subject to exclusions (including damage to employees, oil wells and pollution, and the operation of marine craft). If other insurance is taken out the Section II cover is declared to be for any excess over that insurance (unless the other cover provided otherwise). So, to the extent S7 takes out separate insurance in pursuance of cl 23, Section II does not normally cover the risk. This Section is also subject to deductibles in relation to such risks as shall be specified in a schedule. In one example of an actual contract between S7 and an oil company no deduction was specified in relation to Section II although deductibles were specified in relation to section I.

(3) The cl 23 policies and the liabilities covered by the CAR Contract

85. The results of the LOGIC contract and the CAR policy were therefore as follows

86. Clause 23 imposes obligations on the contractor to insure, for the benefit of the oil company and the contractor, against:

(a) Employer's liability

(b) General third-party liability

(c) Third party and passenger liability and motor liability

(d) Marine Hull and Machinery risk including collision risk to the contractor's vessels

(e) oil pollution etc from the contractor's vessels.

87. Thus the contractor is required to insure against many, but not all, of the risks of liability it retains under the indemnities. In particular the contractor has no obligation to insure against damage to the permanent work being.

88. The combined effect of the indemnities under the LOGIC based contract, the cl 23 policies, and the terms of the CAR contract is that the following risks were insured under the CAR based policy (subject to project specific exclusions, reservations and additions, and to the deductible amount specified in relation to various risks):

(1) Damage to the pipeline (the physical apparatus installed by S7);

(2) Damage to property to be consumed in the project;

(3) Damage to S7's property being used in the construction of the pipeline (excluding vessels, and aircraft, and vehicles to the extent insured pursuant to cl 23 and temporary works not separately scheduled to the policy);

(4) Damage to third party property more than 500m from the worksite;

(5) Under Section II liabilities for personal injury suffered by S7's employees to the extent not covered by insurance taken out pursuant to cl 23.2(a);

(6) Under Section II liability for personal injury suffered by third parties' employees if S7 was negligent and to the extent not covered by insurance taken out pursuant to cl 23.2(b) and (c);

(7) Under Section II, liability for pollution, debris and wrecks so far as not covered by insurance taken out pursuant to cl 23.2(d) and (e).

89. I understood that the cl 23 policies were taken out with third party insurers, but if they were not taken out some cover would have been provided by Section II of the CAR policy.

(4) The insurance contract between TIL and S7.

90. The contract between S7 and TIL changed its wording in about 2015[1]. This was the time when TIL moved its operations from Bermuda to the Isle of Man. Both before and afterwards the policy was a simple one on no more than three or four sides of A4. Each policy document was an umbrella document to which endorsements (with their own particular terms) to cover particular projects were added.

(i) Pre-2015.

91. The pre-2015 TIL/S7 policy document provided:

> "Policy of insurance
>
> In consideration of the premium agreed [TIL] hereby insures [S7] subject to the terms and conditions herein
>
> …Interest insured: Builders All Risk Deductible Policy.
>
> ... limits: ...."

92. On the second page it was provided (again) that the Interest was "Builders All Risk Deductible" and under the heading "conditions" it was said:

- " to cover the deductible under the Builders All Risk policy provided by the client. This also covers projects where the Insured is protected by an indemnity given by the client for damage to or loss of the works.
- "insured shall declare the projects to be insured ... at the end of each month."

> "... No Claims Bonus
>
> Upon completion of each project without damage or loss to the project before the warranty period, Company will pay the No Claims Bonus to the Insured. Company will pay up to a maximum of 50% of premium paid for the specific project as No Claims Bonus."

(ii) 2015 and later.

93. After 2015 the policy provided as follows:

> "Financial Loss Insurance
>
> In consideration of the premium agreed close [TIL] hereby agrees to indemnify [S7] in respect of any Financial Loss.
>
> ...

[1] (There was some uncertainty as to the exact date because the new policy wording appears to have been signed in 2016 but to cover risks in 2015 – see below. I have used 2015 for convenience)

Financial Loss: any pecuniary loss arising in connection with a Project declared and accepted under the policy.

...

Exclusions

1. Financial loss arising out of:

(a) [delay or non-performance by S7]

(b) [strikes etc]

(c) libel etc

(d) breach of duties by directors

(e) "professional services other than when resulting in physical damage or bodily injury""

(f) [known circumstances and computers].

Financial Loss incurred by Insured or by an Employee.

2. [Statutory fines etc]

3. [Liability in relation to IT systems]

"…No Claims Bonus –

Upon completion of each insured project and provided that there is not loss or damage sustained to the property insured, [TIL] will pay a No Claims Bonus to [S7] up to a maximum of 50% of premium paid…"

94. Appendix 1 included the calculation of the premium. This was determined by a formula:

"Highest applicable CAR deductible retained by the Insured under the contract x Deductible factor(37.5%) x contract price factor."

95. An endorsement to the policy dated 10 May 2016 in relation to an EPCI bundle pipeline project describes the "Risk" as "Financial Loss Policy (formerly Builders All Risks Deductible policy)" and says on the same endorsement that "it is agreed to cover the project below ... Deductible Covered: US dollars 386,575".

The parties' arguments.

96. Mr Henderson puts the company's case thus. Its primary case is that the risks insured under the policies relate principally to pipelines in the North Sea outside the 12 mile limit. A pipeline is a building. The policy therefore relates to a building situated outside the UK. To that extent therefore the contract is exempt.

97. He also argues that risks related to things which are being used in the construction of the pipeline "relate to " that building so that the associated risk is therefore also situated outside the UK and the contract is also to that extent exempt.

98. He accepts that there may be some risks which are situated onshore but maintains that they are relatively small by comparison. To the extent an apportionment is necessary he says I should adjourn the appeal for the parties to agree the figures.

99. He says that even if the risk insured is not a building, the risk relates to an establishment situated outside the UK, namely the project sites. He says the majority of the risks relate to those establishments and if apportionment is necessary I should again adjourn the appeal.

100. Miss Carse says that on the proper construction of the TIL contracts the insured risk is that of having to bear the deductible amount under the CAR policy (or the deductible under the indemnity which the oil company may give in its place). That is a financial risk, not a risk of damage to buildings. As a result the location of the risk is to be determined by paragraph 2(2)(d) of the 2001 Regulations (or the equivalent under the Second Directive) as being that of the establishment(s) to which the contract relates. The focus of the interpretation of establishment in 2(2)(d) is the place where the business is actually carried on. The pipelines were not places where the business was carried on, rather they were construction sites. The strategy, administration and direction of the business and the design of the pipeline was carried out in the UK. The risk was therefore located in the UK. Consequently the whole of any insurance premium paid to TIL was fully taxable.

Discussion.

101. I must determine to what extent the risks to which the TIL contracts related were situated in the UK. To that end I address: (i) in what circumstances TIL was obliged to make payment under the contracts, (ii) whether the risks which gave rise to those circumstances related only to financial loss, (iii) whether those risks related to any extent to buildings, and (iv) whether those risks related to any extent to an establishment of S7 outside the UK.

(1) The circumstances in which TIL was obliged to make payment.

102. This is a matter of construction of the contracts between TIL and S7. The obligations created by those terms are to be determined by the ordinary meaning of the words in the contracts in the context of the factual matrix in which the contract was formed (see *Investor Compensation Scheme v West Bromwich Building Society* [1998] 1WLR 869 at 912). That factual matrix, I find, includes the nature of the works undertaken by S7, the contracts under which it undertook that work, and the terms of the insurance or indemnities provided by, or taken out pursuant to, those contracts. It therefore includes an understanding of the risks which could be covered by the CAR based insurance contract (or indemnity) the benefit of which S7 would have.

103. There is to my mind a degree of informality in the TIL contracts which may reflect the fact that they were made between members of the same group. Two examples illustrated this: (i) the post 2015 policy schedule had a signature dated April 2016 but stated that the period of insurance cover was July 2015 to December 2015, and (ii)

whilst that policy schedule said that it was indemnifying S7's Financial Loss, included among the exclusions was "Financial Loss incurred by an Insured".

(i) pre 2016

104.In this period the policy schedule described the Interest Insured as "Builders All Risk Deductible policy" and under Conditions stated

> "To cover the deductibles under the Builders All Risk policy provided by the client. This also covers projects where the Insured is protected by an indemnity given by the client for damage to or loss of the works".

105.The policy which is arranged by the oil company under the LOGIC based contract is termed a "Construction All Risks" policy; the reference in this clause is to the deductible under a "Builders All Risk" policy.

106.Mr Hollis told me that "Builders All Risk" was understood as almost synonymous with Constructors All Risk. He said that a Builders All Risk policy would cover the physical loss or damage to a building an insured was constructing and would exclude consequential economic loss. Traditionally, he said, cover under a Builders All Risk policy was somewhat wider than that under the WELCAR model

107.In the context of the contract with the oil company the reference to the policy "provided by the client" indicates that the "client" is Oilco and that the "Builders All Risk" policy or indemnity provided is the WELCAR based insurance policy or indemnity required by the LOGIC based contract. Therefore, subject to any amendment in the endorsement in relation to a particular project, the TIL/S7 policy binds TIL to make payment when an event occurs which could give rise to a claim under the CAR policy (or indemnity) but, because the coverage is limited to the deductible under that policy or indemnity, the amount payable is limited to the amount of that deductible.

108.If an event occurred which was insured under the CAR policy but in relation to which the liability was less that the relevant deductible amount, it seems to me that the natural meaning of the words "to cover the deductibles " is that TIL would be liable to meet the cost of that event in full.

109.I have noted Mr Hollis' statement that a Builders All Risk policy would cover only physical damage. Ms Louys also told me that she believed that the TIL contract did not cover Section II risks because it related only to damage to the work. In that context she noted that the no claims bonus clause in the (later) post 2015 contract referred to damage to the "property insured" which suggested that it was insuring property damage only (the equivalent words in the no claims discount section of the pre 2015 policy referred to "damage or loss to the project").

110.Given the terms, and the circumstances of formation, of TIL's insurance contracts with S7, I do not consider that the contract is so limited. The ostensible object of the TIL contract is to cover costs which, if they arose on an event to which the CAR contract would respond if they were large enough, are not covered by the CAR contract, and given the informality of the drafting of the TIL/S7 contract, the words to which Ms

Louys alludes do not in the circumstances suggest that the cover is limited to physical damage if Section II of the CAR policy was in operation in relation to a particular project (although they do indicate that covering risk to property was an important object).

111. Thus where the insurance contract taken out by an oil company or the indemnity given by it is in standard WELCAR format, the TIL policy binds TIL to pay in the same circumstances as would cause the CAR policy to pay. On that basis TIL would be required to make payment in the circumstances described in paragraph [88] above:

(ii) post 2015[2]

112. The post 2015 policy does not mention the 'Builders All Risks deductible', it describes itself as "Financial Loss Insurance" and provides that TIL will indemnify S7 in respect of "any Financial Loss"; it describes Financial Loss as:

> "Any pecuniary loss arising in connection with a Project declared and accepted under the Policy",

but, as I have noted above, excluded "Financial loss incurred by an Insured".

113. The description of Financial Loss as being a pecuniary loss arising in connection with a project "declared and accepted under the policy" indicated that, like the pre 2015 policy, the policy document was a framework or umbrella agreement under which individual projects were to be insured when declared and accepted.

114. The only endorsement to that policy shown to me was that relating to an "EPCI bundle pipeline system" which I have taken to be representative of all other endorsements. It described the Risk as:

> "Financial Loss Policy (formerly Builders All Risk Deductible Policy)"

115. The exclusions to the policy provide no link to the CAR policy, but the inclusion among the exclusions of "Financial loss incurred by an Insured or by a Employee" must, unless the policy as a whole devoid of meaning - which cannot have been the intention of the parties – be construed as excluding from the cover matters such as loss of profits or earnings. That, together with the exclusion from loss arising from delay, strikes, defamation, breach of duty, fines and computer systems indicates that the main object of the parties was to ensure that any loss occasioned by physical damage, although it does not show that such was its sole object.

116. Under No Claims Bonus, the reference to "property insured" indicates that the intention of the parties was that risk to property in the project would be among the matters to be covered. In the context of the drafting style and the CAR contract I do not think that this indicates that the policy is limited to property damge.

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[2] See footnote 1

117.Ms Louys said that the change in the words of the policy had occurred at the time when TIL had changed its residence, and was part of a review to ensure that it was able to provide cover in every jurisdiction in which S7 worked; they intended to keep providing the same cover. Even though Ms Louys was a director of TIL and General Counsel to S7, I do not think that her evidence of what was intended by the parties can affect the proper construction of the contract.

118.But, the circumstances of the review, the continuation of the contractual model under which S7 operated, the reference in the endorsement to the former Builders All Risk Deductible policy, and the reference in Appendix 1 to the "CAR deductible", persuade me that the parties intended that the contract should require, and it should be construed as requiring, payment by TIL in the same circumstances as those in which the pre 2016 policy required payment, and that such payment was limited to the amount of the deductible applicable to the relevant circumstance under the CAR based policy or indemnity .

(2) Does the TIL contract relate only to the risk of financial loss?

119.Miss Carse accepts that S7 is not required to pay the oil company the amount of the deductible, but she says that the nature of the risk insured is that of having to bear the deductible under the CAR policy: the policy pays only when S7 has to bear the deductible. It is not, she says, covering a risk of damage to buildings. The occasion of payment is not triggered by an occurrence but by the bearing of the deductible amount. This is shown by:

> (a) the words of the post-2015 policy: is it is expressly coverage of the financial loss and the exclusions all relate to financial loss. It is obviously not a policy which insures damage to buildings; Appendix 1 calculates the premium by reference to the contract price and the highest deductible: that indicates that the policy is insuring a financial loss, not a building;
>
> (b) the words of the pre-2015 policy: it is an insurance against the "Builders All Risk Deductible": it makes no reference to any "gap" in the insurance cover and to construe it as insuring against damage to buildings departs from the ordinary meaning of the words; and
>
> (c) the Appellant's own internal documents which describe the policy as one which "covers the deductible", and "insures the deductible". They make no reference to buildings.

She says that the deductible amount is part of the loss insured by the CAR policy and the TIL policy insures against it being payable. In one letter HMRC put it thus: the insurance is covering the financial loss involved in S7 having to carry out its additional liabilities under its contract; it is not covering the work itself.

120.She notes that the TIL policy does not contain specific terms identifying the risks involved. Instead it is parasitic on each separate CAR policy - and must be because the

CAR policies can differ in their precise terms. Hence what is insured is the occurrence of the deductible cost, not the event giving rise to it.

121.I have not been able to come to the same conclusion as Miss Carse. In applying Art 2(2), I have to determine what in reality or substance are the risks covered by the TIL policies. The word “risk” conveys an element of uncertainty. To my mind the risk which is covered is not that the CAR policy will not pay out the first £x of a claim, but of the events which give rise to expenditure by S7. The cover is not against the fact that the CAR policy will not pay the first £x of any cost, because that is a contractual certainty and not a "risk". The risk is the occurrence of the event giving rise to the obligation on S7 to bear a cost which, were it large enough, would give rise to a right to payment under the CAR policy (or the indemnity). The policy wording may refer to insurance in respect of the deductible but in substance the insurance is against the event.

122.The fact that TIL does not itself remedy the damage but reimburses S7 for the first £x of its costs in so doing does not change the nature of the risk against which S7 insures which is the occurrence of the damage

123.Miss Carse invited me to take the approach taken by the tribunal in *DSG International Insurance Services Limited v HMRC* [2007] UK VAT (IPT) 13. In that case a company called Appliance entered into contracts with consumers to repair or replace defective goods. It delegated the activities of repair and replacement to "Distribution" and agreed to pay Distribution for its work. Its costs were insured with DSG: "costs" being defined as sums paid to Distribution for repairs. The tribunal said [87] that the insured risk was accurately summarised as "paying the cost of the repairs", and that it was not Distribution's activities that were covered by the contract but the payment to it: “the activities of Distribution were not the risk which was covered by the contact of insurance”.

124. In *DSG* the insurance company was obliged to make payment only when Appliance had to pay Distribution. Whilst the occurrence of a need to repair or replace might eventually give rise to an obligation to pay Distribution, the company’s liability was contingent only on Appliance being liable to pay Distribution. That was the occurrence which occasioned liability. By contrast, the occurrence which occasioned liability under the TIL policy was, in relation to a Section I liability the incurring by S7 of the costs of repairs and in relation to a Section II liability the occurrence ofbodily injury or property damage. As a result, it does not seem to me that the conclusions drawn by the tribunal in *DSG* are apposite in this case.

125.I conclude that the risks to which the TIL contracts relate are the occurrence of the events which would, or would but for the deductible amount, give rise to a payment under the respective CAR based policies.

(3) Do the risks which are insured relate to any extent to buildings?

126.Mr Henderson relied upon paragraph 5.2.4 of HMRC's Notice IPT 1 which states:

> "In addition to the normal meaning of building, an oil rig or pipeline fixed to the seabed is also a building for the purposes of IPT, as are similar structures fixed to land, bridges and fixed cranes."

127. Miss Carse did not resile from this view (although she contends that for the purposes of Art 2(d) fourth indent a building or pipeline is not an establishment). It seems, in the light of the ECJ's reasoning in *Kvaerner,* to be correct. A pipeline on the seabed or affixed to a stationary of oil rig is "concrete and physical".

128. It therefore seems to me that, to the extent of the risks covered by the policy relate to damage to a fixed pipeline on the seabed (or rising from the seabed to a fixed oilrig), the policy relates to buildings and falls within Article 2(d) first indent so that where the pipeline lies outside the UK territorial waters, the premium attributable to the risk of damage to the pipeline is exempt from IPT.

129. The TIL policy may cover more than just damage to a pipeline which has been laid. It may cover in addition damage to pipelines in the course of being laid and in the course of construction whether offshore or onshore, and damage to equipment used or to be used. It may also cover some personal liability claims.

130. Mr Henderson focuses on the word "relates" in paragraph 8 schedule 7A "contract [which] relates ... to"., and in Article 2(d) first indent "where the insurance relates ... to buildings". He says that the words "relates to" are broad words sufficient to include materials and machinery which will be used or consumed in constructing a pipeline.

131. I accept that "relates" is a word of broad meaning, that is illustrated by the second indent of Art 2(d) – risks relating to vehicles – which must be intended to cover risks arising in their use. But to my mind a risk relates to a building only if it is sufficiently physically connected to the building. Work on the seabed at the end of a pipeline relates to the pipeline; but the activity of constructing something for attachment to a pipeline or of transporting equipment or materials to a construction site relates to the construction activity rather than the pipeline and is insufficiently physically connected to the building to be said to relate to it.

132. On that basis the risk of damage to a pipeline or other material which has yet to be laid but is being transported to a construction site does not relate to a building. For the same reason cover for damage in the course of construction work to third-party property does not relate to a building unless the contract has a specific building in contemplation – and nothing before me suggested that that was normally the case.

(4) Does the contract relate to any extent to an establishment outside the UK?

133. To the extent that the CAR based contract or indemnity, relates to risks which extend beyond damage to the installed pipeline and do not relate to buildings the question arises as to whether they relate to an establishment outside the UK. If they do not it must be that they relate to the UK where S7 has establishments.

134. There are two candidates for such an establishment: the pipeline itself and the ship from which its construction is managed.

135.Miss Carse accepted that whether or not there was an establishment was a matter of fact and degree. But she says that pipelines are not establishments because they are not where business is carried out; they are construction sites.

136.The offshore activity of S7's business takes place in the surface ships and the part of the pipeline over which they are stationed. The place of that activity is identified by the location of the ship rather than by a pipeline which may be many miles long. Thus if there were an assemblage of human and technical resources in and around a ship with a sufficient degree of permanence I would hold that such a ship (rather than the pipeline) constituted an establishment of S7 so that when it was outside the UK the risks related to it were situated outside the UK.

137.The ships from which the pipelines are laid substantial. They are "concrete and physical" presences. They contain offices (within Art 3) from which the day-to-day work on the project is managed by S7s staff. They have a role analogous to a factory. It does not matter that they do not remain in the same place: a head office in a mobile caravan is nevertheless a head office. It does not detract from their nature as a physical place where the activities of the company are conducted that they move along a pipeline as ground work progresses or make trips back and to port to replenish their stores or to avoid bad weather.

138.But to be an establishment a ship must constitute a gathering of resources in a manner which has an adequate degree of permanence. A ship staffed and resourced to deal with a project lasting 12 months or more is, I consider, to be regarded as an establishment, but one staffed and resourced a few weeks at a time with different teams and different equipment for a different projects is insufficiently established – for it is not the ship which can constitute the establishment but its complement of human and material resources.

Conclusions

139.The risks attributable to the following, to the extent they are covered by the endorsements to the related CAR based policy, are situated outside the UK and the appropriate part of the premium is exempt:

(1) Damage to a fixed pipeline or to material being attached to it and to equipment being used for that purpose;

(2) Damage to property on board or being installed by a ship (constructing a project outside the UK) which constitutes an establishment; and

(3) Personal injury and other liabilities within para [88(5) to (7)] associated with the activities on such a ship to the extent not covered by cl 23 insurance.

140.The risks attributable to the following, to the extent they are covered by the endorsements to the related CAR based policy, are situated within the UK, and the appropriate portion of the premium is taxable:

(1) Damage to property destined to become part of the pipeline in the course of its construction, transport and manufacture in the UK

(2) Damage to property to be used in a project while such property is in the UK or being transported to a ship engaged in a project

(3) Damage to property on board or being held for installation by a ship which does not constitute an establishment; and

(4) Personal injury and other liabilities within para [88(5) to (7)] not associated with a ship which constitutes an establishment.

Rights of Appeal

141. I adjourn the appeal for the parties to consider the quantitative apportionment of the premiums on each relevant policy in the light of the terms f the contracts relating to, and the nature of the projects insured. Either party may apply for the hearing to be resumed.

142. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 14 JANUARY 2021