

## ECJ ruling on Kvaerner

In 2001, the European Court of Justice passed a ruling that has had far-reaching consequences for the insurance industry within the European Union. As part of their verdict the judges determined that policyholders can be held to account for insurers' non-compliance with EU insurance premium tax regulations.

Kvaerner plc, a UK resident company, purchased an insurance policy from an insurance company to cover all of its global operations. Included within its global operations was a Dutch subsidiary company, John Brown Engineers en Constructors BV.

The insurance contract stated that the insured could be Kvaerner itself and any of its subsidiaries and associated as instructed by Kvaerner.

Kvaerner paid the full premium and passed the costs onto the relevant group companies. Without specific instruction from John Brown to do so, Kvaerner included John Brown within the insurance coverage and indirectly invoiced a share of the premium to John Brown.

Upon discovery of the insurance policy the Dutch tax authority billed Kvaerner for Dutch premium tax on John Brown's allocated share of the global premium.

In 2001, the European Court of Justice ruled that the Dutch tax authorities were entitled to collect this tax and so the decision went in favour of the Dutch tax authorities.

### Basis of the decision

Under Dutch tax law, insurance premium tax is levied on insurance premiums covering risks situated in the Netherlands. Location is defined as the principal establishment of the legal person and any other permanent presence of that legal person.

Dutch tax law is in accordance with EU law, which states that every insurance contract shall be subject exclusively to insurance premium taxes in the EU country where the risk is situated. This is further described as the country where the policyholder has habitual residence or where it is a legal person.

### The decision

The ECJ was asked to rule on three questions;

> 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**

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

**ECJ Ruling: No**

> 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.**

### Implications

The obligation to pay premium tax applies to any business operating within the EU, wherever the contract of insurance is entered into or wherever the head office is located.

The obligation to pay premium tax applies even when the EU operation covered is not allocated or billed a share of the premium.

In most EU countries the insurer is deemed liable for the collection and payment of premium taxes. Consequently, there is a requirement that the insurer must comply with local tax regulations in every EU country where they write business.

A buyer of insurance, during the negotiation process with the insurer, must be able to identify the location of all EU risks so that the insurer can allocate the appropriate share of premium for that risk to each EU country and calculate the premium taxes accordingly.

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**Mike Stalley** FCA, Chief Executive, founded **FiscalReps** in 2003 after experiencing at first hand the difficulties involved in achieving international premium tax compliance.

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