ICEN

Issue: **Transactions in UK Land/Trading v investment**

Background:
A Luxembourg-based private equity fund holding UK industrial properties received an unsolicited offer to buy the shares in the property-holding companies. The commercial terms of sale were acceptable to the seller as they had reached their targeted IRR in advance of their anticipated exit.

Issue:
The buyer's accountants raised the risk of the target potentially facing a liability to corporation tax under the Transactions in UK land rules as the properties were being sold in under a five-year period. The amount of the tax, if due, would be in excess of £30m. The seller's advisors also advised the seller that there was risk in relation to the fund as seller under those rules.

Solution:
Two insurance policies were issued: one to the buyer to cover both Transactions in UK Land risk and the risk the targets had historically traded in real estate rather than holding it as an investment. Another policy was issued to the seller to insure the seller against an attack from HMRC under either Transactions in UK land or trading vs investment. The selling fund felt it had always held the assets as investments but wanted to protect their investors against unexpected tax charges.