Letterpart Ltd • Size: 240mm x 162mm • Date: August 2, 2013 • Time: 11:55

De Voil Indirect Tax Intelligence

ISSUE 207 AUGUST 2013

NEWS IN BRIEF

EDITORIAL

CASES AND COMMENT

WHAT IS RESIDENCE?

HOW WE RESOLVE TAX

CUSTOMS

Letterpart Ltd • Typeset in XML • Division: DVITI_207 • Sequential 1

NEWS IN BRIEF

Legislation

The Value Added Tax (Education) Order 2013, SI 2013/1897

This Order amends Item 1 of Group 6 ("Group 6") of Schedule 9 (exemptions: education) to theValue Added Tax Act 1994 ("the Act") to remove the supply of research by an eligible body to an eligible body from exemption from value added tax. It applies with effect from 1 August 2013 but excludes supplies which are made pursuant to a contract entered into before 1 August 2013 if those supplies are made within the scope of that contract as it stood immediately before that date.

Group 6 describes supplies of goods and services in connection with education which are, pursuant to section 31 of the Act, exempt from value added tax. Item 1 of Group 6 exempts the provision of certain services by eligible bodies (which are defined by Note 1 to Group 6). Item 1(b) exempts the supply of research to another eligible body.

Article 1 provides for the title of the instrument, the commencement date of 1 August 2013 and the exclusion in respect of supplies of services made pursuant to a contract entered into prior to 1 August 2013 which are within the terms of that contract as it stood immediately before that date.

Article 2 deletes the operative part of item 1(b).

(See also RCB 21/13 below, Information Sheet 11/13 (details below), andwww.hmrc.gov.uk/tiin/research-300713.pdf).

The Statistics of Trade (Customs and Excise) (Amendment) Regulations, SI 2013/Draft

These draft regulations will amend the UK Intrastat legislation to increase the Arrival Exemption threshold for making declarations from £600,000 to £1,200,000 with effect from 1 January 2014.

See alsohttp://www.hmrc.gov.uk/tiin/intrastat-revised-arrivals-exemption.pdf.

Finance Act 2013

The Finance Act 2013 received Royal Assent on 17 July 2013.

Climate Change Levy (General) (Amendment No 2) Regulations 2013, SI 2013/1716

The Climate Change Levy (General) Regulations 2001, SI 2001/838, sch 3, is amended to replace the formula located in para 2(2).

The formula for climate change levy is amended to ensure fuels used in a combined heat and power station for the production of mechanical outputs of the station are not subject to the carbon price support rates of climate change levy. The new formula has effect from 1 August 2013.

The change in formula has the effect of ensuring fuels used in a combined heat and power station to produce mechanical outputs of the station are not treated as being referable to the production of electricity and are therefore not subject to the carbon price support rates of climate change levy.

Gaming Duty (Amendment) Regulations 2013, SI 2013/1819

FA 2013 made changes to the bands of gross gaming yield for gaming duty. These Regulations, which are applicable to payments on account of gaming duty for any quarter ending on or after 31 October 2013, provide a new table to reflect these changes. The parts of the gross gaming yield in the new table are half the value of new bands provided in the Finance Act 2013 as the period the new table covers is the first three months of a six month accounting period.

The new rates are as follows:

- the first £1,121,250—15%;
- the next £773,000—20%;
- the next £1,353,750—30%;
- the next £2,857,250—40%;
- the remainder—50%.

Data-gathering Powers (Relevant Data) (Amendment) Regulations 2013, SI 2013/1811

The Data-gathering Powers (Relevant Data) Regulations 2012 (SI 2012/847) are amended, with effect from 1 September 2013, to specify what data merchant acquirers must provide to HMRC on receipt of a data-holder notice. People who process payment card transactions for businesses are introduced by Finance Act 2013 as a new class of data-holder.

Government Publications

Revenue & Customs Brief 21/2013–VAT: transitional arrangements for withdrawal of exemption for supplies of research between eligible bodies

HMRC have issued RCB 21/13 dated 30 July 2013. It announces that, as a transitional measure, the UK VAT exemption for business supplies of research between eligible bodies will continue to apply where a written contract was entered into before 1 August 2013, whether or not work has already commenced. The exemption is being withdrawn for all written contracts entered into on or after that date, in order to comply with EU law.

The text of the brief is set out in full below.

"Purpose of this Brief

The purpose of this Brief is to announce the transitional arrangements that will be implemented following the withdrawal on 1 August 2013 of the VAT exemption for research services between eligible bodies.

Who should read this brief

Eligible bodies who supply business research services and those that commission research from eligible bodies.

Background

The UK received notification from the European Commission that its exemption for business supplies of research between eligible bodies does not comply with European legislation. The UK has accepted that this is the case and will withdraw the exemption with effect from 1 August 2013.

HM Revenue & Customs published a consultation December 2012 to gather information to allow them to assess more accurately the impact that the withdrawal of the exemption would have and to establish whether there were any possible options to mitigate that impact.

Transitional arrangements

The withdrawal will apply from 1 August 2013 to all written contracts that are entered into on or after that date.

The Government wants to mitigate the impact of the withdrawal of the exemption on supplies under existing contracts entered into before 1 August 2013.

For supplies of business research where the written contract was entered into before 1 August 2013, whether or not work has already commenced, the exemption will continue to apply to services within the scope of the contract.

The Government believes that these transitional arrangements will reduce the administrative burden on those bodies affected by the change.

Further information

VAT Information Sheet 11/13 [see below] is intended to assist those affected in distinguishing when a contract may be outside the scope of VAT or exempt from VAT. It will also explain in more detail how the transitional arrangements are intended to work and the restrictions on the scope of the arrangements.

Responses document

The consultation responses document will also be published shortly on the GOV.UK website.

Issued 30 July 2013"

VAT Information Sheet 11/2013: Supplies of research between eligible bodies

HMRC have issued Information Sheet 11/13 dated 30 July 2013. It provides additional guidance on when the provision of research between eligible bodies may still be treated as exempt from VAT following the withdrawal of the exemption on 1 August 2013. It also details the transitional arrangements and should be read in conjunction with Revenue & Customs Briefs 10/2013 and 21/2013.

The Information Sheet may be viewed in full at:http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_032855

Notice 700 – The VAT Guide

HMRC have issued a revised (August 2013) edition of Notice 700

This notice has been restructured and rewritten to improve readability. The technical content is largely unchanged from the May 2012 edition, although there are a number of minor amendments, updates and improvements. However, the following amendments have been made to the content:

Para 2.5 – clarification of when you can rely on advice from HMRC.
Section 6 – updated to take account of the changes to registration of Non-Established Taxable Persons.
Para 16.3 – updated to take account of changes to VAT invoicing requirements.
Para 16.7 – corrections made to the example of a completed VAT invoice.
Section 29 – fully rewritten to list all zero-rated supplies under each category and provide a basic description.
Section 34 – the index has received a substantial number of amendments and updates.

Notice 700/45 – How to correct VAT errors and make adjustments or claims

HMRC have issued a revised (July 2013) edition of Notice 700/45. The only substantive change appears to be a revised post code for the address of the VAT Error Correction Team (para 4.11).

Notice LFT1 – A general guide to landfill tax

HMRC have issued a revised (July 2013) edition of Notice LFT1. The notice has been amended to reflect the changes announced at Budget 2012 relating to the lower rate of Landfill Tax and an increase to the maximum credit that landfill site operators may claim against their Landfill Tax liability for contributions made to bodies with objects concerned with the environment enrolled under the Landfill Communities Fund. The legal reference in relation to the definition of connected persons has also been updated.

Revenue & Customs Brief 15/2013 VAT: Judgment in Investment Trust Companies and common law claims against HMRC

HMRC have issued RCB 15/13 dated 10 July 2013. It sets out the options for customers in the Investment Trust Companies case to make mistake-based claims in restitution against HMRC for output tax wrongly charged, following the High Court judgments given in March 2012 and March 2013. These are not statutory claims under the taxes acts and must be made to the relevant court. Any repayments to customers would be linked to a corresponding claim having been made by their suppliers under VATA 1994, s 80 within statutory time limits. Both parties have been given leave to appeal to the Court of Appeal.

The text of the Brief is set out in full below.

"Judgments of the High Court in Investment Trust Companies (in liquidation) -v- CRC [2012] EWHC 458

(Ch); [2012] STC 1150;[2012] All ER (D) 84 (Mar) & [2013] EWHC 665 (Ch); [2013] WLR (D) 125 (ITC)

Claims under section 80 of the VAT Act 1994 (section 80) (the VAT Act) – Claims by persons to whom VAT has been wrongly charged – Common law claims against HM Revenue & Customs (HMRC) by third parties – Whether HMRC is liable – Who can claim

Purpose of this brief

This Revenue & Customs Brief sets out, in the wake of the judgments of the High Court in ITC, HMRC's view of the situation where:

- a person (the Supplier) has charged an amount as VAT to their customers (the Customers) which ought not to have been charged;
- they have passed the ultimate economic burden of that VAT charge on to those Customers so that the VAT has not been a cost to them and has not suffered any loss or damage to their business as a result, and
- owing to exceptional circumstances, the Customers are unable to get the amounts wrongly charged to them back from the Supplier.

Readership

This Revenue & Customs Brief is aimed primarily at professional tax advisors and lawyers although it may be of interest to others.

Action required

This Revenue & Customs Brief is for information only.

HMRC does not require any action to be taken.

Background – section 80 claims

A person who makes taxable supplies (a Supplier) is required to register for VAT and to charge VAT (their output tax) on the supplies of goods and services that they make to their customers. Because they are making taxable supplies, they are entitled to deduct from the output tax for which they are liable the VAT that is charged to them (their input tax) by their suppliers.

If a person has accounted for output tax on goods or services they have supplied on the assumption that those supplies are properly taxable and later discover they are, in fact, exempt, they can make a clam under section 80 to recover the wrongly declared output tax. That claim is subject to statutory time limits (four years) and must be reduced by any input tax that was wrongly deducted.

Section 80 provides that only the person who accounted for the output tax is entitled to make a claim – Please note that it is possible to legally assign the right to make it to someone else under, for example,section 136(1) of the Law of Property Act 1925 (England & Wales), section 87(1) of the Judicature (Northern Ireland) Act 1978 or by an assignation in Scotland.

HMRC will reject a section 80 claim if they believe that the claimant would be unjustly enriched by the payment. Payment will unjustly enrich a claimant if:

- they passed the economic burden of the VAT charge on to their customers in the price charged to them, and
- they suffered no loss or damage to their business (for example, by loss of customers or of profits) as a result of having done so.

Background – Claims by Customers

Where a Customer believes that a Supplier has wrongly charged them VAT, their remedy is to bring a claim against their Supplier. This is a commercial matter and the right to claim against the Supplier will depend upon the terms of the contract under which the goods or services were supplied. In simple terms, the Customer has simply been overcharged by the Supplier.

Such claims are not statutory claims. They are not provided for in any of the tax legislation and will normally be subject to the time limits provided for in the relevant statute of limitations – see below.

There is no statutory provision which would enable the Customer to make a claim against HMRC.

Background – ITC

In June 2007, the Court of Justice of the European Communities (ECJ) delivered its judgment in JP Morgan Fleming Claverhouse Investment Trust Plc & Anor –v– CRC[2008] STC 1180 ruling that supplies of fund management services were not liable to VAT at the standard rate but were exempt.

In the wake of that judgment, HMRC received, and paid, claims made under section 80 by fund managers (the Suppliers) for output tax overdeclared on supplies of fund management services made to investment trust companies (the Customers).

The Suppliers accepted, when they made their claims, that they had passed the economic burden of the wrongly charged VAT on to their Customers, that they had suffered no loss or damage to their business as a result and that, consequently, they would be unjustly enriched if they were allowed to keep any payments made to them by HMRC.

They undertook to reimburse to their Customers anything paid to them by HMRC.

However, as explained above, the Suppliers were not repaid by HMRC the total amount wrongly charged as VAT to their Customers. By way of example, assuming the output tax wrongly charged by the Supplier was £100 and the input tax wrongly deducted by them was £25, the latter was set against the former and the Supplier was repaid the net amount of £75 which they passed on to their Customers.

As a result, the amount wrongly charged to the Customers as VAT by their Suppliers exceeded the amount reimbursed to them.

Nine investment trust companies made common law claims in restitution against HMRC for the difference.

The High Court's judgment in ITC

On 2 March 2012 and 26 March 2013, the High Court handed down its judgments.

Mr Justice Henderson held that:

- section 80 prevents any claim being made against HMRC by anyone other than the Supplier (in this case the fund managers);
- HMRC have been enriched at the expense of the investment trust companies to the extent of the full amount charged by the fund managers to the investment trust companies (that is, the £100 in the example given above);
- that enrichment had been unjust;
- the investment trust companies could be said to have a common law claim in restitution against HMRC notwithstanding the fact that they had made no direct payment to HMRC.

He went on to hold that:

- the investment trust companies' primary remedy was to make a claim against the fund managers;
- any such claim that they might make would, on the facts in this case, be excessively difficult or impossible in practice to enforce;
- the investment trust companies have a directly effective EU law right to recover the balance of wrongly charged VAT from HMRC, and
- to that end they were entitled to make a mistake-based claim in restitution against HMRC.

It was accepted by all parties that the fund managers **had** passed the ultimate economic burden of the wrongly charged VAT on to the investment trust companies and had not suffered any loss or damage to their business as a result.

The effects of the judgment

Both parties have been given leave to appeal to the Court of Appeal against the judgment of the High Court.

Customers who believe that they are entitled to bring claims on the basis of the judgment may do so. However, Mr Justice Henderson held that claims such as those made by the investment trust companies were claims of last resort. In any event, a Customer may **only** be entitled to make a claim direct against HMRC where they can show that:

- the tax was wrongly levied **in breach of EU law;**
- the Supplier passed the wrongly charged tax on to them so that they ultimately bore the economic burden of it, and
- it is, **for reasons unrelated to the merits of the claim**, excessively difficult or impossible in practice for them to make a claim against their Supplier.

Claims **must** be brought in the relevant courts and **must** be particularised.

These judgments have **no application** in relation to duties, taxes and levies which have been collected by HMRC in breach of UK legislation but not in breach of EU law.

Making claims

These are not statutory claims for recovery of tax wrongly accounted for. They are not claims made under section 80 and are outside the jurisdiction of the First-Tier Tribunal.

In England and Wales and in Northern Ireland, these claims are mistake-based claims in restitution and must be brought in the High Court. Claims for less than £30,000 should be brought in the County Court.

In Scotland they are actions of repetition to recover an overpaid sum of money and can be brought in the Court of Session or the Sheriff Court. Claims for £5,000 or less must be brought in the Sheriff Court.

HMRC will normally agree to have claims founded on directly effective EU law rights, and falling within the scope of this Revenue & Customs Brief, stayed or sited behind the litigation in ITC, but all claims **must** be particularised.

'Claims' submitted by writing to HMRC will be neither effective nor valid. HRMC is unable to do anything with them to validate them and they will not stop the clock for the purposes of the relevant time limits.

Time limits

Because these claims are not statutory claims and are not made under any provision of the VAT legislation, they are not subject to the time limits prescribed in the VAT Act but are subject to the time limits provided for in the various statutes of limitation in the three jurisdictions of the United Kingdom.

Those time limits are as follows:

- **England & Wales** – six years from the date on which the cause of action accrued or six years from the date on which the mistake giving rise to the cause of action was discovered or could have been discovered with reasonable diligence –sections 2 and32(1)(c) of the Limitation Act 1980;
- **Northern Ireland** – six years from the date on which the cause of action accrued or six years from the date on which the mistake giving rise to the cause of action was discovered our could have been discovered with reasonable diligence – Articles 6 and 71 of the Limitation (Northern Ireland) Order 1989, and
- **Scotland** – five years from the date on which the obligation arose (the date on which the payment was made by the Supplier to HMRC) unless the claimant can show that he was induced to refrain from making a claim by the words or actions of HMRC – section 6 of the Limitation and Prescription (Scotland) Act 1973.

In the circumstances with which this Revenue & Customs Brief is concerned, a cause of action normally accrues when a person pays an amount to another person which they ought not to have been required to pay.

Important

It is important to note that the High Court held that the investment trust companies (the Customers) were only entitled to repayment of the VAT wrongly charged to them in the prescribed accounting periods for which the fund managers (their Suppliers) had themselves made claims which were in time under the statutory section 80 time limits.

They were not entitled to claim for amounts wrongly charged to them in prescribed accounting periods which were out-of-time when the fund managers made their claims.

In cases where a Supplier has accounted for VAT **in breach of EU law** but has not made a valid section 80 claim, it will not be possible for a Customer to make a claim against HMRC in respect of any period which is, at that point, outside the time limits for a section 80 claim.

The High Court said that the Customer can have no better claim, and no more advantageous time limits, than the Supplier had or would have had.

Further information

Claims of the type discussed in this Revenue & Customs Brief are outside the scope of HMRC's legislation and guidance manuals so that the National Advice Service and the Written Enquiries Teams are unable to advise potential claimants.

If you believe you may be entitled to make a claim, you should seek professional advice.

Guidance on reclaiming overpaid tax for taxpayers who **have** paid VAT to HMRC – including on time limits and unjust enrichment – can be found in 'Notice 700/45 How to correct VAT errors and make adjustments or claims' and the 'VAT Refunds Manual'.

Issued 10 July 2013"

Revenue and Customs Brief 16/2013: VAT exemption for laboratory pathology services provided by state-regulated institutions

HMRC have issued RCB 16/13 dated 8 July 2013. It confirms HMRC's current view that the supply of laboratory pathology services related to the provision of healthcare for individual patients is exempt from VAT. This applies to all state-regulated pathology laboratories, including where they supply services to non-NHS hospitals.

The text of the Brief is set out in full below.

"This brief provides clarification about Her Majesty's Revenue and Customs' (HMRC) policy on when laboratory pathology services are exempt from VAT.

Readership

Health professionals, hospitals, hospices, nursing homes, pathology laboratories and any other state regulated institutions providing medical care. A state regulated institution includes any provider (including companies operated for profit) which requires approval, licensing, registration or exemption in relation to those activities.

Action

To be aware of HMRC's clarification of policy on supplies of laboratory pathology services.

Background

As a result of the Carter report on the review of NHS outsourcing services (2006), which recommended the streamlining of NHS services, some NHS pathology services have been, or are being, outsourced to the private sector. HMRC consider that such services are exempt from VAT. Some suppliers of these services challenge that view. They think that such supplies are liable to VAT on the grounds that:

(a) they do not amount to diagnostic services, but merely provide information a third party to enable it to make a diagnosis, or
(b) the providers are not state-regulated institutions or are not making their supplies in a state-regulated institution.

HMRC'S current position

Our policy (which reflects the decision of the European Court of Justice in the case of LuP C-106/05) is that the supply of laboratory pathology services that directly relate to the provision of healthcare for individual patients is exempt from VAT. This applies to all businesses that are state-regulated and supply laboratory pathology testing services, whether they supply the services to the NHS or to independent hospitals.

HMRC's Notice 701/57 Health professionals and pharmaceutical products (section 2.3) explains what medical services are and which services performed by health professionals (including biomedical scientists and clinical scientists) are exempt from VAT.

HMRC's Notice 701/31 Health institutions (section 2.1) says that the exemption for care and treatment provided in qualifying institutions is exempt when either of the following conditions is met:

- the institution is a hospital.
- the institution is either a hospice or nursing home, and is either: approved, licensed or registered under the relevant social legislation, or exempted from obtaining such an approval or registration by the relevant legislation.

That Notice does not set out the full ambit of health institutions which HMRC consider are subject to the exemption. This Revenue and Customs Brief is designed to do this.

This Brief confirms that:

- state-regulated pathology laboratories are 'qualifying health institutions', for the purposes of the health exemption.
- laboratories are providing exempt medical services when their services are connected with the protection, maintenance or restoration of the health of an individual.

The Guidance will be updated to reflect this in due course.

Why are state-regulated pathology laboratories 'qualifying health institutions?'

An institution is 'state-regulated' if it is approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to legislation. A pathology laboratory which is state-regulated qualifies for the purposes of the exemption irrespective of the location from which it provides its services. It makes no difference whether it occupies premises with or within a hospital or in a separate location.

When are state-regulated pathology laboratories providing exempt medical care?

Services supplied by a pathology laboratory or other similar state-registered institutions are exempt if they are:

(a) made in respect of an individual.
(b) medical services, that is, they are connected with the protection, maintenance or restoration of the health of an individual. These include, but are not necessarily limited to:
    - tests performed as part of a routine check-up to confirm whether or not an individual has been exposed to a particular virus or is suffering from a certain medical condition;
    - diagnostic services or services helping another health professional or health institution to make a diagnosis;
    - tests to establish the overall health of patients to ensure that they are fit enough to have an operation;

- other tests provided as part of the medical treatment of a patient.

When are state-regulated pathology laboratories' services not covered by the health exemption?

Exemption does not apply when the services are not:

(a) concerned with the protection, maintenance or restoration of the health of specific patients, for example, the analysis of samples for general research purposes or for autopsies.
(b) performed primarily for the protection, maintenance or restoration of the health of the person concerned but are done solely to provide a third party with information necessary for taking a decision on non-medical matters such as insurance claims, or for legal purposes.

Making claims or adjustments

Where a business has accounted for VAT on supplies of pathology services which qualify for exemption it may make a claim to HMRC (undersection 80 of the VAT Act 1994) for repayment of VAT incorrectly accounted for subject to the conditions set out in *Notice 700/45 How to correct VAT errors and make adjustments or claims* (http//:customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_CL_000077).

All claims are subject to the four-year time limit in section 80(4) of theVAT Act 1994 and to the set-off provisions in section 81 of the VAT Act andsection 130 of the Finance Act 2008.

We may reject all or part of a claim if repayment would unjustly enrich the claimant.

More details on making claims and 'unjust enrichment' can be found in *Notice 700/45 How to correct VAT errors and make adjustments or claims* (http//:customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_CL_000077).

Further information

For further information and advice, please contact our Helpline on 0845 010 9000.

Issued 5 July 2013"

Revenue & Customs Brief 17/2013 VAT: Insolvency services and Tribunal decision in Paymex Limited

HMRC have issued RCB 17/13 dated 8 July 2013. It reconciles HMRC's guidance in the VAT Finance Manual on supervisory-only services of insolvency practitioners being taxable, with the decision in Paymex Limited in which the Tribunal held a single supply of both nominee and supervisory services to be exempt.

The text of the Brief is set out in full below.

"In recent discussions the insolvency profession has drawn HM Revenue & Customs (HMRC) attention to an internal VAT Finance guidance relating to voluntary arrangements contained in VATFIN3260 (www.hmrc.gov.uk/manuals/vatfinmanual/VATFIN3260.htm) which states that:

'Where the IP acts only as the supervisor and has not previously acted as a Nominee then these supplies will be taxable at the standard rate.'

Insolvency practitioners have asked HMRC to clarify this advice in light of the VAT Tribunal decision in the case of Paymex Limited and the subsequent HMRC Briefs published in response to the Paymex ruling, the content of which were agreed with the insolvency profession.

Revenue & Customs Brief 27/11 (www.hmrc.gov.uk/briefs/vat/brief2711.htm), issued in July 2011, contained the following paragraph under the heading 'Tribunal Decision'

"The Tribunal decided that the services of an IP, including both the nominee and supervisory stages, constitute a single exempt supply for VAT purposes. The

Letterpart Ltd • Size: 240mm x 162mm • Date: August 2, 2013 • Time: 11:55

Tribunal went on to decide that the two core elements were negotiation of debts and transactions concerning payments. Since it had found both core elements to be exempt, it was not necessary for the Tribunal to determine which of the supplies were dominant. However it stated that if it had been necessary for it to do so it would have found negotiation to be the 'core' supply."

For the services of an IP to be covered by the Paymex ruling therefore, those services must constitute a single supply for VAT purposes including both the nominee and supervisory stages. Whilst there is no dispute that the nominee element of the supply is exempt for VAT purposes, HMRC does not accept that the supervisory stage, when provided alone, can always be deemed as exempt. The Tribunal Chairman did not specifically address this point as part of the Paymex ruling.

However, it should also be pointed out that the supply for VAT purposes in a voluntary arrangement is made by the IP firm, albeit through an individual IP. It is HMRC's view, therefore, that where an IP firm provides the services of a supervisor in a voluntary arrangement and no-one from that firm has previously acted as nominee in that particular voluntary arrangement then the supplies made by the supervisor remain taxable at the standard rate. HMRC regrets any confusion that may have arisen in the insolvency profession if this point was not made sufficiently clear in our previous correspondence.

Applying these principles to the following common situations, the VAT treatment will be:

- **If the nominee and supervisor are in the same firm** then their services to the debtor would comprise a single exempt supply.
- **Where a supervisor from a different firm is appointed either at the creditors meeting or subsequently as a successor IP.**
  The supervisor's fees will be standard rated.
- **Where a new firm acquires a portfolio of cases and a new supervisor is appointed.**
  The supervisor's fees will be standard rated.
- **Where a new firm acquires a portfolio of cases but the supervisor moves across with the cases so remains in office.**
  The supervisor's fees will be standard rated.
- The only exception would be if an IP can demonstrate that the core part of their service as supervisor is debt negotiation, in which case HMRC would consider exemption. However as this is usually not the prime purpose of the supervisor or the main role that a supervisor undertakes this situation is unlikely to arise in practice.

Company voluntary arrangements

Stand-alone CVAs

Applying the principles of the Paymex decision, where an IP from the same firm acts as both nomine and supervisor so that his services constitute a single supply for VAT purposes and the core activity at the nominee stage consists of debt negotiation, then the supply will be exempt.

Where the administrator acts as nominee

If the CVA is part of an exit route from administration then it is unlikely that the administrator's activities prior to the beginning of the CVA would consist primarily of debt negotiation. The supervisor's fees would therefore be standard rated.

Conclusion

Generally, the VAT treatment will depend on the circumstances of the individual case measured against the above criteria, but much will always depend on the nature and characteristics of the services provided.

IPs who are uncertain about the correct VAT treatment of their fees in voluntary

Letterpart Ltd • Typeset in XML • Division: DVITI_207 • Sequential 11

arrangement cases should either speak to the specific caseworker or contact the VAT Helpline on Tel 0845 010 900, to obtain advice.

Issued 8 July 2013"

Revenue & Customs Brief 18/2013 VAT: Tax avoidance using offshore entities– ECJ judgment in Newey

HMRC have issued RCB 18/13 dated 9 July 2013. The Brief confirms that HMRC will continue to investigate what they consider to be artificial contractual relationships established for tax avoidance purposes and look through to the underlying economic reality of transactions. The recent ECJ decision in *Newey* (t/a Ocean Finance), on a reference from the Upper Tribunal, gave support to the view that contractual terms are not necessarily decisive in the context of the Sixth VAT Directive.

The text of the Brief is set out in full below.

"Purpose of this brief

This brief updates taxpayers and their advisors on the recent decision of the European Court (CJEU) in Paul Newey (trading as Ocean Finance), case C-653/11,[2013] All ER (D) 254 (Jun).

Readership

Businesses with VAT appeals affected by the European Court's decision in the Newey case, and their advisors.

Action required

For information only

The issue

Mr Newey was a loan broker, established in the United Kingdom who arranged loans by UK lenders to UK borrowers. His services were exempt from VAT and as a result he could not recover VAT on advertising services supplied to him.

In order to avoid this irrecoverable VAT, Mr Newey set up a company, Alabaster (CI) Ltd, in Jersey, and granted it the right to use the business name Ocean Finance. Broking contracts were concluded between the lenders and Alabaster, and the broking commissions were paid not to Mr Newey, but to Alabaster. Alabaster then entered into a contract for the supply of advertising services.

HMRC took the view that, notwithstanding the contractual terms, the advertising services concerned were supplied to Mr Newey in the United Kingdom and were therefore taxable in the United Kingdom. The First Tier Tribunal allowed Mr Newey's appeal against that decision and HMRC appealed to the Upper Tribunal, which referred questions to the CJEU.

The CJEU decided that although contractual terms should be taken into consideration, they are not decisive. They may be disregarded where they do not reflect economic and commercial reality and are a wholly artificial arrangement set up with the sole aim of obtaining a tax advantage.

It is now for the Upper Tribunal to decide the case in light of this.

HMRC's approach

The guidance from the CJEU confirms HMRC's view that economic reality must be considered and that contractual relationships do not necessarily determine VAT issues. HMRC will continue to mount in-depth investigations where we believe that a tax advantage may have been claimed artificially.

Issued 9 July 2013"

Notice 252 Valuation of imported goods for customs purposes, VAT and trade statistics

HMRC have issued a revised (July 2013) edition of Notice 252. It has been restructured to improved readability. The following paragraphs or sections have also been amended or re-written for clarification and update:

- information about the use of form C21, see paragraph 2.16;

- representation, see Section 3;
- low-value goods, see paragraph 11.4;
- non-statistical goods and use of CPC 10 00 098, see paragraphs 11.5 and Section 14;
- the movement of CAP and Excise goods from the UK to Russia via Latvia/Finland or Estonia on a Non-regular (Unauthorised) shipping service, see paragraph 12.4;
- exporting goods to the Channel Islands, see paragraph 15.2;
- Inward Processing (IP), see paragraph 16.3;
- change of address for comments and suggestions at the end of the Notice.

Notice 473 Production, distribution and use of denatured alcohol

HMRC have published a revised (July 2013) edition of Notice 473. There are new paragraphs on the supply of free samples of Industrial Denatured Alcohol (IDA) and Trade Specific Denatured Alcohol (TDSA) – see paragraphs 8.5 and 10.9, supplies of IDA and TSDA to educational establishments see paragraphs 8.6 and 10.10 and the inclusion of a purple dye in Completely Denatured Alcohol (CDA) – see paragraph 2.3.

Paragraph 2.2 has been updated to show the new formulation for CDA. Sections 16, 18, 19 and 21 have also been updated.

Notice 700/62 Self Billing

HMRC have published a revised (July 2013) edition of Notice 700/62. Changes have been made to reflect the changes to the rules for VAT self-billing introduced by Council Directive 2010/45/EU, in particular the requirement for VAT self billed invoices to include the reference 'SELF BILLING'

Customs Information Paper (13) 43: Valuation of fruit & vegetables– New CPC for use with Standard Import Values

HMRC have issued CIP (13) 43 dated 5 July 2013. It states that a new Customs Procedure Code will be introduced on 1 September 2013 for declaring imports of fruit and vegetables using Standard Import Values.

The paper may be viewed in full athttp://www.hmrc.gov.uk/jccc/cips/2013/cip-13-43.pdf.

Customs Information Paper (13) 44 Tariff Preference: temporary derogation for peaches, pears and pineapples in fruit juice from Swaziland

HMRC have issued CIP (13) 44 dated 11 July 2013. It concerns a temporary retrospective derogation from the normal preferential rules for peaches, pears and pineapples in fruit juice exported from Swaziland between 1 January 2013 and 31 December 2014.

HM Treasury review into pre-release of Budget information

Treasury Permanent Secretary, Sir Nicholas Macpherson, has recommended a ban on the pre-release to media organisations of the core content of future Budgets and Autumn Statements. The Chancellor of the Exchequer had commissioned a review of the practice of pre-releasing budget information under embargo, following the Evening Standard's posting of its front page on Twitter on Budget day 2013. For full details, seehttps://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211824/PU1546_Review_into_the_pre-release_of_Budget_information.pdf (July 2013).

Notice 702: Imports

HMRC have published a revised (July 2013) edition of Notice 702. Amendments have been made to the following paragraphs:

1.2 – What is this notice about?
2.6 – Claiming repayment of overpaid import VAT
2.7 – Non-UK traders with a UK establishment and their agents
3.2 – How Customs calculate Import VAT

4.3 – Postal imports
8.6 – When can I expect my C79 certificate?

Government plans to widen island fuel duty relief scheme to inland areas

The government is to seek permission from the European Commission to extend the island fuel rebate scheme to a number of remote rural areas in the UK. Fuel retailers in these areas are being invited to supply pump price data for the last quarter of 2012.

For further details, seehttps://www.gov.uk/government/news/fuel-rebate-extension-plans-to-remote-inland-areas-take-step-forward.

Consultation on publishing data

HMRC are conducting a consultation exercise into the possibility of sharing and publishing certain VAT registration data held by HMRC (VAT registration number, trading name and Standard Industry Code). The consultation period continues until 24 September 2013, following which a response will be made in the 2013 Autumn Statement. For details of the consultation, seehttps://www.gov.uk/government/consultations/sharing-and-publishing-data-for-public-benefit.

Notice CCL1/6 A guide to the Carbon Price Floor

HMRC have published new (July 2013) Notice CCL1/6. The carbon price floor was introduced on 1 April 2013, requiring owners of electricity generating stations and operators of combined heat and power stations to account for new carbon price support rates of climate change levy on fossil fuels (gas, LPG and solid fuels) used in electricity generation.

HMRC Spotlight – tax avoidance in relation to non-profit making bodies

HMRC are challenging schemes which take advantage of the VAT exemption for non-profit-making bodies by routing fees through these bodies to make what have been termed "covert distributions".

HMRC consider that some businesses seek to take advantage of exemptions for VAT that are available where certain sporting and educational/training supplies are provided by a non-profit-making body. These businesses purport to provide sporting or educational supplies/training via non-profit-making bodies but in reality the profit on these supplies is extracted from the non-profit-making body – for example by means of non-VAT-bearing fees charged by an associate of the non-profit-making body. The courts have used the term "covert distribution" for the extraction of profits/surpluses in this way.

HMRC accept that the exemptions apply to businesses that are genuinely non-profit-making bodies but HMRC do challenge arrangements which involve "covert distribution" through litigation where necessary They strongly advise anyone who has used such a scheme to consider withdrawing from the scheme. By withdrawing and notifying HMRC, people will avoid the costs of litigation and minimise interest on underpaid tax and any penalties that might be applicable.

(See http://www.hmrc.gov.uk/avoidance/spotlights.htm).

Tribunals

First-tier Tribunal

J & B Massey (t/a Hilden Park Partnership) v HMRC (and related appeal) (2013) TC02787

VAT: abuse of law

A partnership which owned a golf club transferred its business to two companies which claimed that their supplies qualified for exemption from VAT under *VATA 1994, Sch 9, Group 10*. (Both companies subsequently went into liquidation.) HMRC issued an assessment on the partnership on the basis that the scheme was an abuse of law within the *Halifax* principle, so that the partnership should be deemed to have continued to make the relevant supplies. The First-tier Tribunal dismissed the partnership's appeal, applying the principles laid down in *HMRC v The Atrium Club Ltd, [2010] STC 1493*. Judge Mosedale held that "there would be an abusive tax advantage if the appellants received covert profits from a company which made supplies which were treated as exempt on the basis that it was non-profit making. It would be abusive because the legislation only intended exemption to apply to truly non-profit making taxpayers". On the evidence, "the sole and essential aim of the new structure was an abusive tax advantage". Therefore the transactions had to be redefined so that the relevant supplies were deemed to be made by the partnership rather than by the companies.

PA Brookes v HMRC (2013) TC02762

VAT: liability of directors (VATA 1994, s 61)

HMRC imposed a penalty on a property development company (V) which had produced fabricated invoices in support of several repayment claims. They sought to recover the penalty from V's controlling director (B), The First-tier Tribunal dismissed B's appeal, finding that he had acted dishonestly.

Megantic Services Limited v HMRC (2013) TC02770

In a case where HMRC considered that the company (Megantic) had been involved in MTIC fraud, HMRC applied to amend their Statement of Case to include "evidence that Megantic either paid incomplete consideration for its purchase of the relevant goods or made no payment at all". Megantic opposed the application but the First-tier Tribunal granted it, observing that HMRC had requested relevant information from the company eleven months previously, so that Megantic had "been given sufficient warning so as not to put it in this respect on an unequal footing or add an excessive burden to (Megantic's) task of preparing for the hearing in this appeal".

Astral Construction Limited v HMRC (2013) TC02773

A company constructed a nursing home on the site of a redundant church, incorporating most of the church as a reception area. HMRC issued a ruling that the work constituted the conversion of the church, and was chargeable to VAT at the reduced rate of 5%. The company appealed, contending that the work qualified for zero-rating. The First-tier Tribunal accepted this contention and allowed the appeal, observing that "viewed structurally and as a whole the church can only be described as being dwarfed by the new build".

Terence and Mrs Dawn Walker v HMRC (2013) TC02774

A family company, of which Mr and Mrs Walker were the controlling director and company secretary respectively, failed to submit eight successive VAT returns, did not appeal against estimated assessments which understated its liability to VAT, and subsequently went into administration. When HMRC discovered this, they imposed penalties under VATA 1994, s 60, mitigated by 15%, on Mr and Mrs Walker. The First-tier Tribunal upheld the penalties, finding that they had acted dishonestly and that there were no grounds for any further mitigation.

Mercedes-Benz Financial Services Ltd v HMRC (No 2) (2013) TC02778

Sales of vehicles under 'contract purchase agreement'– time of supply

A company (M) sold vehicles under a "contract purchase agreement" which gave customers the option of purchasing or returning the vehicle at the end of the agreement. In accounting for VAT, M treated the agreement as a rental agreement with an option to purchase, so that the payments under the agreement were consideration for supplies of services and VAT was chargeable at the time each payment was made. HMRC issued assessments on the basis that M was making supplies of goods, so that VAT was chargeable on the full consideration at the beginning of the agreement. The First-tier Tribunal dismissed M's appeals, holding that the agreements fell within Article 14(2)(b) of Directive 2006/112/EC. Judge Tildesley held that each agreement was "a contract for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment".

Basslabs Ltd v HMRC (2013) TC02780

Registration – whether registration number can be transferred

A sole trader (H) registered for VAT, but failed to submit four successive returns.

In 2008 H informed HMRC that he had ceased trading as a sole trader and had incorporated a company (B). He asked HMRC to transfer his registration number to B. HMRC declined to transfer the registration number, on the basis that there was no evidence of a "business link", and issued a new number to B. The First-tier Tribunal dismissed B's appeal. Judge Kempster observed that the nature of the business which B intended to carry on "was markedly different from that of (H)".

Oliver's Village Café Ltd v HMRC (2013) TC02783, [2013] UKFTT 386 (TC)

Time at which application for cancellation of registration made

A company (O) registered for VAT from March 2008, although its turnover had not reached the statutory threshold. On 11 June 2009 one of its directors (C) telephoned HMRC to request the cancellation of its registration. HMRC agreed to send a form VAT 7. On 9 September C wrote to HMRC requesting that O's registration should be cancelled retrospectively. HMRC received the letter on 11 September and agreed to cancel the registration from that date but refused to make the cancellation retrospective. O appealed. The First-tier Tribunal allowed the appeal in part, directing that O's cancellation should be cancelled with effect from 11 June 2009 (the date on which C telephoned HMRC to request the cancellation) but rejecting O's request to backdate the cancellation to 2008.

J & B Massey (t/a Hilden Park Partnership) v HMRC (and related appeal) (2013) TC02787, [2013] UKFTT 391 (TC)

Exemption for sports clubs

A partnership which owned a golf club transferred its business to two companies which claimed that their supplies qualified for exemption from VAT under *VATA 1994, Sch 9, Group 10*. (Both companies subsequently went into liquidation.) Judge Mosedale held that "there would be an abusive tax advantage if the appellants received covert profits from a company which made supplies which were treated as exempt on the basis that it was non-profit making. It would be abusive because the legislation only intended exemption to apply to truly non-profit making taxpayers." On the evidence, "the sole and essential aim of the new structure was an abusive tax advantage". Therefore the transactions had to be redefined so that the relevant supplies were deemed to be made by the partnership rather than by the companies.

Upper Tribunals

HMRC v Able UK Ltd v HMRC [2013] UKUT 318 (TCC))

Directive 2006/112/EC Article 151(1)(c) – exemption of supplies to NATO forces

A UK company supplied "ship decommissioning services" to the US Navy. HMRC issued a ruling that it was required to account for VAT on these supplies. The company appealed, contending that they qualified for exemption under Article 151(1)(c) of EC Directive 2006/112/EC. The Upper Tribunal in the first instance directed that the case should be referred to the ECJ, which held that Article 151(1)(c) "must be interpreted as meaning that a supply of services such as that at issue in the main proceedings, made in a Member State party to the North Atlantic Treaty and consisting in dismantling obsolete ships of the Navy of another State party to that treaty, is exempt from VAT under that provision only where those services are supplied for staff of the armed forces of that other State taking part in the common defence effort or for the civilian staff accompanying them, and those services are supplied for members of the armed forces who are stationed in or visiting the Member State concerned or for the civilian staff accompanying them". Following this decision, the Upper Tribunal allowed the company's appeal.

Court of Justice of the European Union

État Belge v Medicom SPRL (and related appeal) (Case C- 210/11); 18 July 2013 unreported

Treatment of private use of goods as supply of services

In a Belgian case, a company (M) allowed some of its managers to occupy part of a property free of charge. It reclaimed input tax relating to the property. The tax authority rejected the claim and M appealed. The case was referred to the ECJ, which held that Articles 6(2) and 13B(b) of the EC Sixth Directive "must be interpreted as precluding the making available of part of immovable property belonging to a legal person to its manager for his private use, without there being provision for the beneficiaries of that arrangement to pay a rent in money by way of consideration for the use of that property, from constituting an exempted letting of immovable property within the meaning of that directive; the fact that the making available of that property is deemed, under the relevant national income tax legislation, to be a benefit in kind stemming from the beneficiaries' performance of their corporate duties or under their contract of employment is of no import in that regard". They must also "be interpreted as meaning that, in situations such as those at issue in the main proceedings, the issue whether or not the making available of all or part of the property in its entirety forming part of the assets of the business to managers, administrators or members of that business is directly linked to the operation of the business is of no relevance for the determination of whether that making available comes within the exemption provided for in the latter provision".

Fiscale Eenheid PPG Holdings BV cs te Hoogezand v Inspecteur van de Belastingdienst/Noord/Kantoor Groningen (Case C-26/12); 18 July 2013 unreported

Article 17(2) – right to deduct

In a Netherlands case, the ECJ held that Article 17 of the Sixth Directive "must be interpreted as meaning that a taxable person who has set up a pension fund in the form of a legally and fiscally separate entity, such as that at issue in the main proceedings, in order to safeguard the pension rights of his employees and former employees, is entitled to deduct the value added tax he has paid on services relating to the management and operation of that fund, provided that the existence of a direct and immediate link is apparent from all the circumstances of the transactions in question".

Evita-K EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (Case C-78/12); 18 July 2013 unreported

Accounting (Articles 241–249)

In a Bulgarian case, a company reclaimed input tax on the purchase of calves which were intended to be slaughtered. The tax authority rejected the claim on the basis that the company had failed to comply with certain veterinary formalities. The company appealed, and the case was referred to the ECJ, which held that Article 242 of Directive 2006/112/EC "must be interpreted as meaning that it does not require taxable persons who are not agricultural producers to show in their accounts the subject matter of the supplies of goods which they make, when animals are concerned, and to prove that those animals were subject to control in accordance with International Accounting Standard 41 'Agriculture'".

AES-3C Maritza East 1 EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite Plovdiv (Case C-124/12); 18 July 2013 unreported

Origin and scope of right of deduction (Articles 167–172)

In another Bulgarian case, a company which operated a power station hired staff from an associated company and reclaimed input tax on the provision of transport and protective clothing. The tax authority rejected the claims and the company appealed. The case was referred to the ECJ, which held that Articles 168(a) and 176 of Directive 2006/112/EC "must be interpreted as precluding national legislation under which a taxable person which incurs costs for transport services, work clothing, protective gear and business trips for staff working for that taxable person does not have the right to a deduction of the VAT relating to those costs on the ground that that staff is provided to it by another entity and accordingly cannot be regarded, for the purposes of that legislation, as members of the taxable person's staff, despite the fact that those costs can be regarded as having a direct and immediate link with the general costs connected with all the economic activities of that taxable person".

Court of Appeal

Pendragon plc v HMRC (and related appeals), CA [2013] EWCA Civ 868

The principle of 'abuse'

An accountancy firm advised a group of companies to enter into a complex scheme with the intention of only accounting for VAT on its profit on "demonstrator cars", rather than on their full sale price. Four associated "dealership" companies sold various "demonstrator cars" to three associated "captive leasing companies" under leaseback arrangements. The "captive leasing companies" assigned the benefit of the lease agreements and the underlying cars to a Jersey bank (S) in return for a substantial 45- day loan facility. A month after these transactions, another associated company (PD) entered into an agreement with S to acquire its car hire business. This was treated as a transfer of part of S's business as a going concern, and therefore as outside the scope of VAT. PD then sold the cars to arm's length customers under the second-hand margin scheme, only accounting for VAT on its profit margin. HMRC issued assessments on the basis that the scheme was an "abuse", applying the principles in *Halifax plc v C & E Commrs*. They also imposed misdeclaration penalties. The companies appealed. The First-tier Tribunal reviewed the evidence in detail and allowed the appeals. Judge Shipwright observed that the accountancy firm "seemed to think it was selling a means of reducing VAT on demonstrator cars which also involved the provision of third party finance". However, the subjective aim of the accountancy firm was not conclusive. The main aim of the holding company's finance director was to ensure that its "continued funding needs were met". Viewed objectively, the principal aim of the transactions was "the obtaining of finance", rather than "an abusive VAT advantage". The Upper Tribunal reversed this decision but the CA unanimously restored it. Lloyd LJ held that Judge Shipwright had been entitled "to come to the conclusion that no element of the arrangement was inserted artificially, and that the arrangements were not abusive or artificial".

High Court

R (oao GSTS Pathology LLP) v HMRC (and related applications) (No 1), QB [2013] EWHC 1801

Implementation of revised ruling

A limited liability partnership (G) had reclaimed input tax relating to its supplies of pathology services. In 2013 HMRC issued a ruling that the effect of the ECJ decision in *L.u.P. GmbH v Finanzamt Bochum-Mitte* was that the supplies were exempt under *VATA 1994, Sch 9, Group 7, Item 4*. G appealed, and also applied for an injunction preventing HMRC from implementing the ruling pending the hearing of its appeal, contending that previous rulings which HMRC had issued in 2008 and 2010 had given it a legitimate expectation that it could reclaim input tax. The QB granted an interim injunction. Leggatt J held that, as a matter of UK law, it appeared that the services were simply the provision of information which G's customers could use for therapeutic purposes, and were not themselves exempt. He described the ECJ's reasoning in *L.u.P. GmbH v Finanzamt Bochum-Mitte* as "opaque". He also held that the reasoning expressed in HMRC's decision letter "could not command confidence". The implementation of HMRC's ruling would have serious financial effects on G, and if it were applied retrospectively, it would render G insolvent. Furthermore, this was not a case where G had "withheld any relevant information or failed to put their cards face up on the table when they requested a ruling". It appeared that there had been "a change in the personnel within HMRC responsible for dealing with (G)". It would be "wholly unreasonable to expect the claimants to restructure their business before the true legal position has been established by the decision of the tribunal". Therefore "the balance of convenience clearly favours granting an interim injunction so as to preserve the status quo in terms of tax treatment until after the tax appeal has been determined".

David Rudling and Alan Dolton
Lexisnexis

EDITORIAL

Property and the interface between commercial and residential

Mixed use building

The interface between commercial and residential is one that is apt to produce some of the most fruitful issues VAT advisers have to consider. So it caught my eye when, some four days before my editorial deadline, the CJEU issued its decision in combined cases C-210/11 and C-211/11 which dealt with a point that had not occurred to me.

This case has some points of curiosity before we even dig into the subject matter. First, both cases, which were combined, emanate from Belgium, and only the Belgian and Hungarian Governments offered observations. Although it was considered by Advocate General Kokott, who discussed the matter with the Court, the Court decided not to put the AG to the trouble of an Opinion. Finally, both cases seemed to have suffered an excessive length of gestation, one being in respect of an assessment issued in 2000 and the other an assessment issued in 1995; both cases receiving a decision in the Belgian Courts in 2006, only to find their way to the CJEU in 2013. One consequence of this delay is that the cases were all held under the auspices of the 6th Directive, which of course begs the question as to relevance to the Principal VAT Directive (though the cases do appear relevant nonetheless).

As to why there was so little involvement of other governments in the arguments one can only surmise that the point raised was either so remarkable that the governments thought they could not put sufficient resources towards coming to a conclusion on the point, or was such a bad point that there was no reason to waste time over a matter where the answer was obvious. We do not know what AG Kokott had to say to the Court, but it may have been along the lines of the second of these. If so, then I am not sure that that is fair on the Belgian Government. The argument had something of wayward genius about it. It might have floored all of us, just as so many decisions at this level have done, and left us wondering whether we really knew anything about our subject. It did not do that but the story is still worth the telling.

The issue relates to property that is constructed using VAT-bearing costs, where the resultant building has a direct business use but also provides private accommodation for workers. In one case that was a caretaker flat, but in the other, more unusually, it involved a hybrid building that provided both commercial and residential parts. A new building of the latter kind in the UK would have enjoyed zero rating on the residential part if new, or reduced rating if converted (subject to some conditions). But, we can assume for the sake of the story that there was VAT on the costs involved. The Belgian government had wanted a partial disallowance to reflect private use. The Belgian Court had refused that in both cases, thus precipitating an appeal which had the effect of a reference being made to the CJEU.

One might imagine that the point had been tested sufficiently in *Seeling* (*C-269/00*). But the Belgians had thought laterally and now invoked the more recent CJEU decision in *Astra Zeneca* (*C-40/09*) to construct an alternative basis to the issue of apportioning VAT.

It will be recalled that *Seeling* asserted that what is now Article 26 (Principal VAT Directive) provides that any expense where there is a measure of business use will be treated as a business expense for input tax purposes but that private use thereof produces a liability to output tax; (whereas that is not how the provision is exactly formulated, that is what it means in practice). Where a purchase has a solely private use then there is no basis for VAT recovery. Where there is a partial private use then the very old case law in *Armbrecht* (*C-291/92*) gives the business discretion if it wishes to apportion the input VAT and hold part of the asset wholly outside its business. If one fails to choose the *Armbrecht* solution then the entire cost initially falls to be a business cost per *Seeling*. One is then involved in the deemed supplies, and those are subject to VAT.

But the Belgians noted the point that the supply of these goods amounted to a supply of services of residential accommodation. This supply, of course, is generically exempt. Was it possible therefore to say that the business was making an exempt supply of residential accommodation and was thus liable to apportion the input tax under partial exemption? Such an interpretation would make Article 26 effectively non-applicable for residential accommodation. It had also been discussed in *Seeling* and regarded as not applicable.

Nothing daunted, the Belgians came up with the following interactive points. First, the accommodation provided for the workers was treated for payroll tax purposes as a benefit in kind and thus taxed on money's worth as an emolument. They also noted the well known result in *Astra Zeneca* concerning salary sacrifice and argued that there was a parallel here. They said, in brief, that the very value of receiving the accommodation involved effective pay to the workers, and the fact that they were paid but had not received the money must mean that they had sacrificed the money for the benefit. It followed that the case fell within *Astra Zeneca,* since it was merely another version of salary sacrifice, except that there had been no bargaining at the outset as to what would or might be sacrificed.

This is a very attractive argument from a purely intellectual stand point. What, after all, is the difference between a person who says "take some of my salary and give me accommodation in return" and the person saying "I will take the accommodation knowing that you are going to pay me less"? And why, if they are not the same thing in reality is there a benefit in kind charge?

However the Court saw through this use of logic. The act of bargaining salary away against child care vouchers was not analogous with accommodating one's work force close to the business. And whilst the latter was clearly private use (thus caught by a deemed supply), it did not involve a clear case of consideration paid for a supply. The mechanism was just not 'there'. The provision was clearly free and not paid for in imaginary money derived from a seeming counterfactual situation where the employee deliberately bargained pay for benefits.

But it must be of interest as a precedent in cases which one has perhaps yet to bring to mind. If this is not a form of payment for the said benefit, then are there cases where HMRC might like to see some kind of consideration, perhaps in certain of the more marginal cases of barter, where this case may come to one's aid? If so, then remember the name: *Etat Belge v Medicom SPRL and Maison Patrice Alard SPRL.*

Residence associated with business

Turning to a different issue, but with similar overtones, the First Tier Tribunal ("FTT") case reported briefly last month concerning the ability to recover VAT under the DIY Housebuilder Scheme also attracted my attention. The name of this case is *Lesley Swain* (*TC02719*). It involved a barn conversion where the converter intended to live in one of four barns. She aimed to get permission to live in one, and although she would own the other three, she would not renovate them. They would be decorative hulks.

Her problem was that the consent she received from the planners was to allow that barn to be used as residential accommodation for the manager of the other converted barns which had to be used as rented holiday accommodation. She ignored this restriction, converted the one barn into living accommodation, and applied for a DIY VAT refund. She was refused by HMRC owing to the building being used for business (which the tribunal rejected), because the terms of the consent had not been adhered to, and because separate use or disposal was not possible.

The tribunal was not optimistic about the owner's outlook in general terms, let alone for VAT. It thought that the consent's terms in any case had not been complied with because the appellant had not intended to manage a suite of holiday cottages but simply to live in one of the converted barns. This, it surmised, failed the consent in any case and left the owner exposed. However, it went on to consider whether the condition, in the VAT legislation, that the dwelling had to be allowed to be both separately used and separately disposed of could be applicable. In other words, was a house that had a restriction concerning its use by a neighbouring business one that could not fall into the DIY refund scheme.

Like the Belgian case this was not the newest issue under the sun. It has been held in other FTT decisions that an occupancy restriction to a class of worker (eg. to miners) does not involve a prohibition of separate use. However, this went a step further and required the property to be used in conjunction with a specific set of business premises and ancillary to a specific business. This put us straight into the range of the well known case about the house adjacent to a cattery, namely *Wendels* (*UKFTT 476*).

In *Wendels* the appellant made a DIY claim in respect of a house for which the planning restriction was that it could only be used by current or past operators of the cattery. The planning restriction did not say something like: "the house is prohibited from being used separately from the cattery". This, apparently, made a significant difference to the tribunal's decision. It gave rise to the tribunal deciding that this case was closer to those cases where the property had to be used by a more general class of worker or occupant than to the case where the property itself was stated as being part of the actual infrastructure of the stated business.

This is a view that also found support from a tribunal in *Burton* (*UKFTT 104*). But the tribunal in *Swain* chose to disagree. Instead of focussing on the specific words of the planning consent it focussed on their meaning in the context of the Town & County Planning Act 1990. Under this, the tribunal opined, the conditions in question inure for the benefit of the land and all people who are interested in the land. Thus the prohibition of certain classes of people using the property is not distinguishable from a prohibition of a separate use of the property as such.

Whilst it was thus possible for the VAT condition of no prohibition of separate use to be navigated successfully where an entire class of worker was the relevant restriction, because that restriction did not define another premises or infrastructure from which the object property was not to be used separately, the defining of such a narrow group as those who were specifically connected with the neighbouring business was a different matter. The building would, thereby, be connected with the actual neighbouring business and separate use thereby was prohibited in all practical terms. The tribunal in *Swain* therefore declined to follow either *Wendels* or *Burton,* saying that they had taken an unduly narrow view (or perhaps too literal a view).

For me, however, the *Swain* tribunal appears to miss a point in this, which might have saved it from declaring all out disagreement with the other decisions. Both of the permissions in *Wendels* and *Burton* required either a worker in the related business or a person who had retired from that business to use the property. But in *Swain* it had to be a proprietor or a manager of the holiday home business (and that person's household), and did not encompass the retired worker. A retired worker could use the property separately from the business. In *Swain* there was no such option. The *Swain* logic appears convincing, but it need not displace the *Wendels* logic where a past worker can also live in the premises. So perhaps there is no significant breakthrough for HMRC in this decision after all, despite the protestations of *Swain's* own tribunal chairman.

Graham Elliot
Withers Worldwide

CASE AND COMMENT

Honda Motor Europe (UK) Ltd & others v HMRC, First-tier Tribunal (Tax Chamber), released 29 January 2013

The Appeal and the Issue

This appeal concerned customs duty tariff classification decisions taken by HMRC, applying the Combined Nomenclature ("CN"). The decisions were on the classification of products called utility all terrain vehicles ("ATVs") which are designed for use as tractors. It was agreed that the ATVs were to be classified under one of the classifications within CN 8701 as each ATV was a small tractor. The ATVs had no fitted winch, no power take-off and no hydraulic lifting device. The issue between the parties was whether the ATVs were to be classified as agricultural tractors (under subheadings CN 8701 90 11 to 8701 90 50) which are free of customs duty, or "other" tractors (under subheading CN 8701 90 90) which are subject to customs duty at 7%.

HMRC's decisions were that the ATVs were "other" tractors, therefore subject to customs duty at 7%.

The Tribunal dismissed the appeal concluding that the ATVs were "other" tractors, as they were not intended for agricultural use.

General Approach

The Tribunal considered the General Rules of Interpretation and applied the approach to classification set out by Advocate General Kokott in *Ikegami Electronics* (*Case C-467/03*) *[2005] ECR I-2389*. Classification had to be by reference to the objective characteristics and properties of the goods and was to be assisted by the non-binding Explanatory Notes issued by the European Commission ("CNEN") and the Harmonised System Explanatory Notes issued by the World Customs Organisation ("HSEN"). The Tribunal held the relevant CNEN to be valid and clear. The Tribunal decided to look first at the CN by reference to the CNEN, bearing in mind Commission Regulation EC/1051/2009, rather than using that Regulation as the starting point.

CN Headings and Subheadings

In the subheadings to the CN there was reference to "agricultural tractor", but no definition of that term or list of physical criteria to be satisfied, other than a reference that established that an agricultural tractor had to be wheeled. It was the nature of the difference between tractors in general and "agricultural tractors" which was critical to classification. Intended use was relevant to the classification. The CNEN state that agricultural tractors are ones "*obviously intended, given their construction and equipment, to be used for agriculture…*". It was necessary to look at the intended use of the tractor with reference to farming, or farming purposes, and also in the field of agriculture (which was a broader concept). It was not enough to show that the tractors were intended for use on farms by farmers, as that was insufficient if the tractor was to be used by farmers for transporting or towing.

Meaning of Intended Use

It was necessary to consider the correct approach to intended use established by the ECJ in *BVBA Van Landeghem* (*Case C-486/06*) *[2007] ECR I-10661*. The appearance and objective characteristics of the tractors which give them their *essential character* had to be ascertained in order to establish the intended use of the tractors. Reference to design suggested that the relevant features had to be built in; they must be embodied in the product. Not every actual use was an intended use. Intended use must be something which is within the design of the product. Thus intended use means inherent use. The significance of objective characteristics and design features had to be assessed by reference to the CN headings and the CNEN.

The Tribunal was not persuaded by the Appellant's argument that the way in which the product is marketed is a relevant consideration.

Applying *BAS Trucks BV* (*Case C-400/05*) *[2007] ECR I-311* it is by reference to the particular uses for which vehicles are especially designed that different tractors are to be distinguished for the purposes of classification. Examination of design comes first and assessment of intended use follows from design. Thus, although the Tribunal agreed with the Appellant's submission that the ATVs could be used for agricultural as well as other purposes that was not decisive as it was the purposes for which the ATV was designed, viewed objectively, that are relevant. The Appellant's submission that actual use was relevant, and that inferences as to the intended use and correct classification could be drawn from the main actual use, had to be rejected as it "put the cart before the horse".

The intended use of a tractor is to be judged by its specially designed, constructed or reinforced features which form an integral part of the product and which perform a function such as lifting, excavating and levelling. Those features allow an agricultural tractor to be distinguished from other tractors. HMRC did not dispute that the ATVs may have a use which is agricultural in nature when combined with attachments, but those attachments were not provided when the ATV was purchased or designed as part of the ATV. The Tribunal noted that ATVs could only be used with a limited range of implements as they had only a limited electrical power source available to operate them. A farmer would need larger agricultural tractors for use in open areas where most farm activities take place. The Tribunal concluded that there was nothing inherently agricultural about the ATVs.

CNEN and HSEN

Turning to the CNEN and HSEN, the Tribunal, applying *Kamino* (*Case C-376/07*) *[2009] ECR I-1167*, treated them as complementary, consulting them jointly, and as an important aid for interpreting the scope of tariff headings, albeit without legally binding force. One paragraph of the CNEN provided that "*Agricultural tractors are generally equipped with a hydraulic device enabling agricultural machinery …to be raised or lowered, a power take-off enabling the power from the engine to be used to operate other machines or implements and a coupling device for trailers. They may also be fitted with a hydraulic device intended to operate handling equipment …*" The Appellants contended that the use of the word "generally" excluded the possibility that those characteristics were necessary characteristics for a tractor to qualify as an agricultural tractor.

The Tribunal rejected that submission, concluding that the word "generally" must be taken to indicate a quality which attached to a class of products (in this CNEN to agricultural tractors) in general. Taking that paragraph as a whole it was reasonable to conclude that a hydraulic lifting device and a power take-off are expected to be found in agricultural tractors. The Regulation had taken out the word "generally" and stated that classification as an agricultural tractor is excluded if the tractor has neither a power take-off, nor a hydraulic device, nor a winch. When read with the Regulation, the meaning of that paragraph in the CNEN is clear and it could and should be read with the Regulation, to give a consistent interpretation that did not change the meaning of the CN. Thus the CNEN laid down certain design features which are expected to be found in agricultural tractors and which the ATV's did not possess. The appeal failed, even before coming to the Regulation. The HSEN did not lead to a different conclusion, given the objective characteristics of the ATVs which led to the conclusion that its main intended use was not agricultural.

Commission Regulation EC/1051/2009

The Regulation is a source of primary law and binding on HMRC and the Tribunal, but cannot be used to restrict the scope of a CN heading. In this case there was no conflict between them. The Appellant contended that the Regulation was not directly applicable to the ATVs because they were not identical to the products addressed by the Regulation. The Appellants relied on the weight specified, towing capacity, features of tyre requirements, and features of the ATVs not mentioned in the Regulations. The Regulation referred to a weight of approximately 310 kgs and the Tribunal concluded that it covered vehicles up to about 100kg lighter. Therefore the Regulation included all the ATVs relevant to the appeal. As regards the towing capacity requirement, the Appellant did not fully discharge the burden of proof. The most relevant evidence of towing capacity, calculated as a multiple of weight, came very near to the towing capacity required by the Regulations, and that was also only an "approximate" requirement. The ATV's tyres were of the type referred to in the Regulations. As to additional features of the ATVs not mentioned in the Regulation, the differences were minimal. They

Letterpart Ltd • Size: 240mm x 162mm • Date: August 2, 2013 • Time: 11:55

did not take the ATVs out of the scope of the Regulation, which had to be read to facilitate a coherent interpretation of the CN and ensure equal treatment of competing products. Additionally, it was not necessary for all of the characteristics stated in the Regulation to be met in a strict sense as where the word "approximately" is used the precise features specified were only directory in nature. The ATV's should be classified as "other" tractors under CN subheading 8701 90 90 pursuant to the characteristics identified in Regulation EC/1051/209.

Kawasaki

The Appellants were wrong to conclude that the ECJ in *Kawasaki* (*Case C-15/05*) *[2006] ECR I-6763* had decided the classification issue in their favour. The ECJ had only been concerned with the difference between a vehicle for transport of persons (CN Head 8703) and a vehicle for hauling and pushing (CN Head 8701) and was most concerned with engine power. It did not decide the point in issue before the Tribunal and was of no assistance to the Tribunal.

Importance

In this customs tariff classification case the Tribunal ultimately had no difficulty in classifying the ATVs as other than agricultural tractors and therefore liable to 7% customs duty. This was because it was able to read the CN headings, the CNEN and the Regulation together and consistently. The "step by step" approach taken by the Tribunal, addressing first the CN headings, then intended use, bridging to the CNEN, and finally the Regulation, allowed it to examine rigorously the objective characteristics of the products in issue by reference to both the relevant binding legislation and non-binding notes. However, it can be noted that the "step by step" approach did not prevent the Tribunal from adopting a holistic analysis, having regard to all of the relevant legislative provisions and guidance at each step. It did not fall into the error of treating them individually *and* in isolation. The Appellant's case failed after two of its key points, based on the relevance of actual use to which ATV's were put, and of the manner in which the goods were marketed and promoted were rejected by the Tribunal. In many indirect tax cases, questions of actual use and how products are marketed will, at least, be part of the relevant surrounding circumstances of a transaction and relevant to ascertaining the economic reality of the supply. However, there are particularly cogent reasons in customs tariff classification cases for ensuring that the analysis is based not only on objective criteria, but on the inherent characteristics of the product. Therefore it is understandable that the Tribunal preferred to judge intended use by reference to an assessment of the product's essential inherent features and capabilities in order to decide what use the product was designed for.

Peter Mantle
Monckton Chambers

WHAT IS A RESIDENCE?

Zero-rating: conversion from non-residential to dwellings

The recent decision in *Alexandra Countryside Investments Ltd* (*TC02751*) has raised an interesting issue concerning the zero-rate conversion relief and highlighted an anomaly between the conversion relief and the DIY relief.

Pub conversions

The case concerned the vexed question of the conversion of a pub. This has been before various Tribunals and Courts. The frequency and number of disputes suggests that this is an area that needs clarification and either the issue of an Extra Statutory concession, change in legislation or the issue of a Business Brief by HMRC to clarify the way conversions are to be dealt with (particularly if they follow the decision in this case).

Letterpart Ltd • Typeset in XML • Division: DVITI_207 • Sequential 25

Facts

This decision concerned the conversion of the Cheshire Cheese pub into two dwellings. Alexandra Countryside Investments (the company) had reclaimed input tax in respect of the conversion. The company believed that the sale of the two houses would be zero-rated supplies and consequently the VAT incurred would be deductible. HMRC rejected the claim for input tax, as they believed the sale of the dwellings would be exempt.

The problem with the conversion, as it usually is with pub conversions, is that the pub contained accommodation for the manager. In each of the dwellings that were created there were parts of the manager's flat. As each new dwelling contained a part of the old flat, HMRC were of the view that a new dwelling had not been created by the conversion and this prevented the sale from being zero-rated supplies.

Legislation

Item 1 of Group 5 of Schedule 8 of VAT Act 1994 permits the zero-rating of the sale of a non-residential building or a non-residential part of a building that has been converted into a building designed as a dwelling or number of dwellings. It would seem from this that the sale of the converted property in question should be zero-rated. There is, however, a note to the group (note 9), which states that the conversion of a non-residential part of the building is not zero-rated when it already contains a residential part unless the result is to create an additional dwelling or dwellings.

Purpose of the legislation

When this legislation was introduced it was stated that the purpose of the legislation was to encourage the conversion of non-residential buildings into residential properties. A package of reforms was introduced at that time to encourage the use of brownfield sites, to increase the number of dwellings within the urban boundaries rather than expanding outwards through building new housing estates. It might be thought, therefore, that the conversion of a pub into two dwellings would be regarded as being within the spirit of the legislation.

The note to the Group clearly restricts the relief and it is the note that determines if the relief is available or not.

Impact of Note 9

The note prevents the relief from applying where there is a conversion of premises that include an existing residential part. The note, however, is disapplied when the conversion creates an additional dwelling or dwellings. It may, therefore, be thought that the conversion of the Cheshire Cheese pub which had one manager's flat in it would be eligible for the relief as the conversion was into two dwellings. HMRC do not believe that this is the case, as each of the conversions contained a part of the manager's flat so no additional dwelling had been created out of either conversion. Perversely, if the conversion had been undertaken horizontally instead of vertically, the relief would have been available for one dwelling. The dwelling on the ground floor would not have contained any part of the manager's flat so the relief would have been available. The conversion of the upper floor, which contained the manager's flat, would not have been eligible for the relief.

Previous decisions

A direct parallel can be drawn with the decision in *Calam Vale Ltd [2001] BVC 4056* (*16869*). Again, a pub that included residential accommodation was converted into two dwellings, each new dwelling containing a part of the previous residential accommodation. The Tribunal, when making its decision, was influenced heavily by the point that Note 9 is intended to restrict not extend the relief. In the words of the Tribunal Chairman it forced the Tribunal to the absurd conclusion, "… which flies in the face of common sense, of equity and of the 'social purpose' which is supposed to underlie and inform zero-rating." It also found HMRC's views that the note was intended to prevent avoidance lacked proportionality. Nevertheless the Tribunal found that even where an additional dwelling has been created, no zero-rating is available if the dwellings created included any part of a pre-existing dwelling. As would be expected, HMRC relied upon the *Calam Vale* decision in their submissions to this Tribunal.

It might be thought that this would have provided clear guidance to the Tribunal in this case to find for HMRC. The Tribunal, however, looked at another case; the Court of Appeal decision of *HMRC v Jacobs [2005] STC 1518*. The appellant relied upon this decision in its appeal. The case did not wholly reflect the position of the appellant as it concerned a DIY claim. This is a relief that enables a person that either builds their own house or converts non-residential premises into a dwelling or dwellings to reclaim the VAT incurred on related goods. It is not a zero-rating relief (which is contained in s 30 VAT Act 1994) but a separate relief for a reclaim of VAT (subject to a number of conditions) provided at s 35 VAT Act 1994. Although there were differences, the basis for the claim were the same as those for zero-rating.

The *Jacobs* appeal concerned a schoolhouse, that contained residential accommodation for staff, being converted into a main house and separate dwellings for staff. Some of the conversions contained parts of the pre-existing residential accommodation. Whilst differing from the pub conversions mentioned above there are clear parallels for the application of the reclaim or zero-rating relief.

The Court of Appeal rejected HMRC's appeal and found for Jacobs. The reason for its decision was that the Court of Appeal did not look at the relief from the perspective of each individual conversion but from the building as a whole. When the building as a whole was considered, additional dwellings were created and consequently the relief applied.

As a result of the *Jacobs* decision, HMRC accepted that where there is a conversion of non-residential property that contains pre-existing residential accommodation, it is eligible for the relief as long as additional dwellings are created. VAT recovery, however, is limited to the conversion of the non-residential parts. HMRC did not extend the relief to the conversion of non-residential accommodation for resale for any property that contained any part of the pre-existing residential accommodation. When queried on this point by the Tribunal in this case, HMRC's representative stated that this was because the reliefs are given by different sections of the VAT Act.

Decision

The Tribunal in this decision (of *Alexandra Countryside Investments Ltd*) concluded that the relief was available as two dwellings were created in the conversion of the Cheshire Cheese pub. The Tribunal recognized that this was contrary to the *Calam Vale* decision and HMRC's current policy, but noted that as *Calam Vale* was a Tribunal decision, it was not binding on the Tribunal. The Tribunal also concluded that the analysis of the meaning of Note 9 by the Court of Appeal was preferable and consequently, *Alexandra Countryside Investments Ltd* was successful in its appeal and the sale of the converted properties were eligible for the zero-rate relief despite containing a part of the pre-existing residential property.

The Future

It is not known if HMRC will appeal this decision, but the current position is that developers can benefit from zero-rating. It is to be expected that HMRC will issue some guidance on how they expect the relief to operate in the future. This point has been contentious for many years and there have been numerous cases regarding the meaning of Note 9. It would appear sensible that the relief is meant to apply where there are additional dwellings created in the building, rather than taking the perspective of each conversion. Taxpayers and advisors will, however, have to wait and see how HMRC react.

John Davison
Independent Indirect tax consultant

HOW WE RESOLVE TAX

The first report by HMRC's new Tax Assurance Commissioner

The first report by the new Tax Assurance Commissioner ("TAC") and Second Permanent Secretary at HMRC, Edward Troup, was published on 2 July 2013. The role of TAC was announced in February 2012 as part of measures intended to strengthen HMRC's governance arrangements in response to concerns about how HMRC handle tax disputes. Through direct involvement in the oversight of large settlements, the scrutiny of the processes for resolving tax disputes of all sizes and engagement with HMRC's teams of 17,000 tax professionals, the Tax Assurance Commissioner is responsible for providing assurance that HMRC consistently achieve the correct tax outcomes for the Exchequer under the law. With two other Commissioners, he acts as the final point of approval for settlements in the largest and most sensitive cases (those with more than £100 million of tax under consideration) and in a sample of cases where the tax involved is at least £10 million but less than £100 million; and generally oversees HMRC's decision-making processes in all tax disputes.

The report, entitled "How We Resolve Tax Disputes" (http://hmrc.presscentre.com/Press-Releases/New-Tax-Assurance-Commissioner-and-Lead-Non-Executive-at-HMRC-67c3c.aspx), outlines HMRC's performance in resolving disputes with taxpayers for the period from the Tax Assurance Commissioner's appointment in August 2012 to March 2013.

By way of background, the National Audit Office reported in 2011 on HMRC's handling of tax disputes with large businesses and generally commended the strength of the governance arrangements in place. However, it noted five cases in which the normal processes had not been followed. HMRC accepted that there was a need to restore public confidence in the way in which they handled tax disputes, by providing greater assurance through improving the transparency of their processes and strengthening the governance of decisions in the largest and most sensitive cases. The first report describes these changes and sets out the framework that underpins how HMRC handle tax disputes.

Against this background, the package of changes in governance arrangements relating to settling tax disputes introduced by HMRC and announced in February 2012 was follows:

- the establishment of the new post of Tax Assurance Commissioner;
- reform of the decision-making model for HMRC's largest and most sensitive cases, through the creation of the Tax Disputes Resolution Board ("TDRB") in September 2012 and ensuring that decisions on whether or not to settle are made by three Commissioners ("the Commissioners");
- a review programme for the processes followed in settled cases, involving a pilot concerned with around 200 cases in Autumn 2012;
- an enhanced role for HMRC's Audit and Risk Committee;
- publishing a new Code of Governance on settling tax disputes on 1 November 2012, to improve transparency about HMRC processes;
- an annual published report on tax settlement work.

The TDRB considers proposals to settle tax disputes in cases where the total tax under consideration in the case as a whole is more than £100 million; in cases which are particularly sensitive, where the decision could have a significant impact on HMRC policy, strategy or operations; and in a sample of cases where the tax involved is at least £10 million but less than £100 million. It may also consider cases in which novel or unusual features have arisen and may either decide the basis for resolving disputed points or refer them to the Commissioners with a recommendation. The TDRB makes recommendations to the Commissioners as decision-makers, decisions having to be unanimous. It meets monthly and held its first meeting in September 2012. Seven meetings took place in 2012/13 and 31 cases were considered. The report reveals that in the six months under the new arrangements, the TDRB referred 22 cases to the Commissioners for a decision, of which eleven proposals by taxpayers worth £1,368 million were accepted; six proposals by taxpayers worth £285 million were accepted with conditions; and five proposals by taxpayers worth £398 million were rejected.

HMRC have also established a range of governance boards beneath the TDRB, responsible for settling smaller cases and for ensuring that sample cases are referred to the TDRB and Commissioners. These include the Enforcement and Compliance Disputes Resolution Board, charged with settling cases where the tax under consideration is between £10 million and £100 million; and in Business Tax, the Large Case Management Board, established in April 2013 with representatives from across HMRC and responsible for taking decisions and providing advice on high value and significant tax disputes between £25 million and £100 million. Further, in order to seek to ensure a consistent approach to different taxpayers, HMRC's Business Tax and Personal Tax Contentious Issues Panels and Anti-Avoidance Board set the handling strategy for issues affecting multiple taxpayers. The report emphasises that the establishment of a framework for handling an issue consistently across a range of cases in which the point is in dispute, is an important aspect of governance work, helping to ensure that HMRC administer the tax system in an even-handed way.

As stated above, one of the changes in governance arrangements introduced by HMRC involved the publishing of a new Code of Governance on 1 November 2012. The overall aim is to have processes in place that ensure that tax collection runs smoothly; allow HMRC staff to carry out their responsibilities with appropriate regard for their expertise; and provide assurance to HMRC's stakeholders that disputes are resolved appropriately, fairly and consistently. This aim is intended to dovetail with HMRC's strategic objectives, being to maximise revenue collected, improve customer service and reduce costs. In line with these objectives, HMRC seek to resolve tax disputes on the basis set out in the Litigation and Settlement Strategy ("LSS"). Under the LSS, HMRC undertake only to resolve tax disputes on a basis which is consistent with the law, whether by agreement with the taxpayer or through litigation. Wherever possible, HMRC seek to resolve disputes through collaboration, reaching agreement without litigation, since it considers this to be the speediest and most efficient approach. However, HMRC will take cases to litigation if an outcome consistent with the law cannot be achieved in any other way, though the LSS makes clear that a dispute should only be taken to litigation if litigation would be cost-effective.

Where there is a range of possible outcomes, the guiding principle is that HMRC will only settle a dispute by agreement if it is believed that the outcome is one which might reasonably be expected to be obtained in litigation. Further, the LSS requires each tax dispute to be resolved on its merits, a key principle which discourages the practice of engaging in multiple disputes in the expectation that HMRC will concede a proportion of them.

Where HMRC are unable to reach agreement with the taxpayer, then as part of the formal appeals process, the taxpayer can request that HMRC undertake a review of the decision in question or can submit an appeal against it to the Tax Chamber of the First-Tier Tribunal. If the taxpayer requests a review, they may still appeal the matter to the Tribunal should they disagree with the outcome of the review. The Tribunal can re-examine HMRC decisions on the basis of the facts or the law. If the taxpayer disagrees with the Tribunal's decision, the decision can be appealed to the Upper Tribunal. Decisions of the Upper Tribunal can be appealed to the Court of Appeal (or the Court of Session in Scotland) and ultimately to the Supreme Court and the Court of Justice of the European Union.

Reviews are conducted by dedicated Review Officers within HMRC Appeals and Reviews Teams who were not involved in the original decisions. The Review Officer looks again at the facts of the case, the legal position and the process behind the decision-making; and decides whether to uphold, vary or cancel the original decision, in accordance with HMRC's LSS. In 2011/12, the latest year for which detailed figures are available, a total of 56,228 reviews of HMRC decisions were undertaken, of which 57% upheld the HMRC decision on completion of the review; 6% varied the HMRC decision; 36% cancelled the HMRC decision; and in 1% of reviews, the HMRC decision was deemed to be upheld after the time limit for conducting the review expired.

In 2011/12, again the latest year for which detailed figures are available, a total of 4,354 appeals to the First-Tier Tribunal were closed, either at a formal hearing by the Tribunal or without a hearing being required. Of these appeals, 61% were found in HMRC's favour, 7% partially in HMRC's favour and 32% in the taxpayer's favour.

In 2012/13, there were eighteen cases to which HMRC were a party heard in the Court of Appeal/Court of Session and four in the Supreme Court. Fourteen of these cases confirmed HMRC's view of the relevant law, including significant decisions on the scope of legal professional privilege in tax advice provided by accountants and the relief that can be given when trustees make decisions with unforeseen tax consequences. In six cases, the decision went against HMRC's arguments and two judgments have not been issued. The Tribunals and Courts also issued decisions in 33 avoidance cases, with 27 being decided in HMRC's favour. According to the report, these avoidance case victories for HMRC have protected more than £1 billion in tax. Further, HMRC claim that litigation decisions decided in their favour in 2012/13 protected tax of around £10 billion.

Instead of pursuing the formal appeals process and litigation, and in line with the Government's commitment to dispute resolution and HMRC's LSS, a taxpayer may also consider whether Alternative Dispute Resolution ("ADR") techniques will assist in reaching an agreed resolution. HMRC have recently trialled the use of ADR in two pilots which were deemed successful and now proposes to employ ADR more widely. The focus of ADR is neutral, collaborative engagement, in particular in fact-heavy cases or where views have become entrenched. It is intended to overcome deadlocks in dispute resolution by establishing or re-establishing constructive dialogue through an intensive, mediated process.

Within his report, however, the Tax Assurance Commissioner recognises that not all in the HMRC garden is rosy. He accepts that more needs to be done to ensure that the overall governance framework for tax decisions is well understood, particularly in more specialist areas. He also intends that his review of settled cases has a broader range in the current year and that lessons continue to be effectively learned. Finally, he wishes to ensure that while taxpayers' confidentiality is maintained, nevertheless the public gains a better understanding of how HMRC resolves tax disputes. His report may merely be the first step in a lengthy process intended to restore public confidence in the way in which HMRC handle tax disputes.

Phil Rimmer
Director of M&R Tax Advisers Ltd

CUSTOMS

Theft of goods in duty suspension

Duty may be charged and payable on goods released from duty suspension arrangements. The "duty" may be customs duty, import VAT or excise duty. The duty suspension arrangements may be storage or movement of goods in duty suspension; including customs warehousing, tax warehousing, transit and intra-EU movements. Release from duty suspension may be caused by the theft of the goods. In the case of theft or other acts of dishonesty, it is necessary to determine whether an innocent duty debtor is entitled to any relief from the duty that is otherwise charged and payable.

On the 11 July 2013 the Court of Justice of the European Union gave some guidance on the matter in *Case C273/12 Harry Winston SARL*, a request for a preliminary ruling under Article 267 TFEU.

The request concerned the interpretation of Article 206 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ("the Customs Code"), and Article 71 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ("the VAT directive").

There was a dispute between the French customs administration and Harry Winston SARL ("Harry Winston"), concerning the payment of customs duties and value added tax ("VAT") on goods which were stolen while under customs warehousing arrangements.

The law

The Customs Code

Article 202(1) of the Customs Code provides:

"A customs debt on importation shall be incurred through:

(a) the unlawful introduction into the customs territory of the Community of goods liable to import duties, or

(b) the unlawful introduction into another part of that territory of such goods located in a free zone or free warehouse.

For the purpose of this Article, unlawful introduction means any introduction in violation of the provisions of Articles 38 to 41 and the second indent of Article 177."

Article 203 of the Customs Code provides:

"1. A customs debt on importation shall be incurred through:

– the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

3. The debtors shall be:

– the person who removed the goods from customs supervision,

– any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,

– any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the

goods that they had been removed from customs supervision, and
– where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed."

Under Article 204 of the Customs Code:

"1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or
…
in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.
…"

Article 206(1) of the Customs Code provides:

"1. By way of derogation from Articles 202 and 204(1)(a), no customs debt on importation shall be deemed to be incurred in respect of specific goods where the person concerned proves that the non-fulfilment of the obligations which arise from:

– the provisions of Articles 38 to 41 and the second indent of Article 177, or
– keeping the goods in question in temporary storage, or
– the use of the customs procedure under which the goods have been placed,

results from the total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of authorisation by the customs authorities.
For the purposes of this paragraph, goods shall be irretrievably lost when they are rendered unusable by any person."

Article 233 of the Customs Code is worded as follows:

"Without prejudice to the provisions in force relating to the time-barring of a customs debt and non-recovery of such a debt in the event of the legally established insolvency of the debtor, a customs debt shall be extinguished:

…
(c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:

– the customs declaration is invalidated;
– the goods, before their release, are either seized and simultaneously or subsequently confiscated, destroyed on the instructions of the customs authorities, destroyed or abandoned in accordance with Article 182, or destroyed or irretrievably lost as a result of their actual nature or of unforeseeable circumstances or force *majeure*;
…"

The VAT directive

Article 2(1)(a) and (d) of the VAT directive states:

"The following transactions shall be subject to VAT:
(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;
…
(d) the importation of goods."

Article 70 of the VAT directive provides:

"The chargeable event shall occur and VAT shall become chargeable when the goods are imported."

Article 71 of the VAT directive is worded as follows:

> "1. Where, on entry into the Community, goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.
> However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.
> …"

The facts and the dispute

In the course of an armed robbery, items of jewellery held by Harry Winston under customs warehousing arrangements were stolen. The customs administration, by collection notice, sought payment from Harry Winston of the customs duties and VAT applicable. Harry Winston, following an unsuccessful administrative complaint, brought proceedings against the customs administration with a view to having that notice set aside.

The District Court set aside the collection notice in relation to the VAT and, with regard to the customs duties, stayed the proceedings pending a ruling by the Court of Justice on two questions referred for a preliminary ruling concerning the interpretation of Article 206 of the Customs Code. The customs administration appealed against that decision.

The Court of appeal upheld the decision of the District Court and varied the decision relating to the customs debt. The Court of appeal purported to apply Article 206 of the Customs Code, and held that the armed robbery, having been unforeseeable and unavoidable by reason of its brutality and criminal characteristics, fulfilled the conditions of *force majeure* and had led to an irretrievable loss of the goods.

With respect to VAT, the Court of Appeal purported to apply the ECJ's judgment in *Case C435/03 British American Tobacco and Newman Shipping [2005] ECR I7077*, that the theft of goods does not constitute a "supply of goods for consideration" within the meaning of Article 2 of the VAT directive and cannot be subject to VAT. The customs administration appealed in cassation.

The questions

The Court de cassation decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

> "1. Is Article 206 of [the Customs Code] to be interpreted as meaning that the theft, in the circumstances of the present case, of goods held under customs warehousing arrangements constitutes the irretrievable loss of the goods and a case of *force majeure*, with the consequence that, in that situation, no customs debt on importation is deemed to have been incurred?
> 2. Is the theft of goods held under customs warehousing arrangements such as to give rise to the chargeable event and to cause the [VAT] to become chargeable pursuant to Article 71 of the [VAT directive]?"

The judgment

The Court held as follows.

The first question

Article 206 of the Customs Code, in situations within the scope of Articles 202 and 204(1)(a), precludes a debt from being incurred where the person concerned proves that the non-fulfilment of its obligations results from the destruction or irretrievable loss of the goods as a result of the actual nature of those goods or unforeseeable circumstances or *force majeure*, or as a consequence of authorisation by the customs authorities. But Article 206 of the Customs Code only applies in situations where a customs debt is liable to be incurred pursuant to Articles 202 and 204(1)(a).

Article 202 of the Customs Code concerns the incurring of a customs debt in situations where goods have been unlawfully introduced into the customs territory of the European Union, a situation which did not correspond to Harry Winston's facts.

Article 204(1)(a) of the Customs Code refers to a customs debt on importation being incurred in cases of non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from the use of the customs procedure under which they are placed,in cases other than those referred to in Article 203 of the Code. Articles 203 and 204 of the Customs Code have separate fields of application, the first referring to conduct resulting in an unlawful removal from customs supervision of goods and the second concerning failure to fulfil obligations and the conditions connected with different customs procedures.

The Court held that in order to determine which of those two articles forms the basis on which a customs debt on importation is incurred, it is necessary firstly to consider whether in fact there was an unlawful removal from customs supervision within the terms of Article 203(1) of the Customs Code. Only if that question has been answered in the negative is it possible that Article 204 of the Customs Code may apply (see *Case C337/01 Hamann International [2004] ECR I1791, paragraph 30*).

Unlawful removal from customs supervision, referred to in Article 203(1) of the Customs Code, must be interpreted as covering any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from carrying out the monitoring required by the customs regulations (*Case C371/99 Liberexim [2002] ECR I6227*, paragraph 55 and the case-law cited; *Case C222/01 British American Tobacco [2004] ECR I4683*, paragraph 47 and the case-law cited; and *Case C300/03 Honeywell Aerospace [2005] ECR I689*, paragraph 19).

Such is the case said the Court where, in a situation like Harry Winston, goods placed under a suspensive procedure, have been stolen (see *Case C140/04 United Antwerp Maritime Agencies and Seaport Terminals [2005] ECR I8245*, paragraph 31).

The incurrence of a customs debt in Article 203 cases, like that of Harry Winston, is justified because the goods would be subject to customs duties if they did not benefit from the suspensive procedure of the customs warehouse. Therefore, a theft committed in a customs warehouse results in those goods being removed from the customs warehouse without having been cleared through customs. The Court's presumption in its judgment in Joined *Cases 186/82* and *187/82 Esercizio Magazzini Generali and Mellina Agosta [1983] ECR 2951,* according to which, in the case of theft, the goods enter the economic circuit of the European Union, is relevant.

Article 206 of the Customs Code does not preclude a customs debt from being incurred in cases of irretrievable loss of the goods as a result of *force majeure* in the event of the unlawful removal of the goods from customs supervision referred to in Article 203(1).

It follows that the theft of goods from Harry Winston's customs warehouse, gave rise to a customs debt on importation pursuant to Article 203(1) of the Customs Code and did not come within the scope of Article 204(1)(a) of the Code.

Since Articles 202 and 204(1)(a) of the Customs Code did not apply to the case, the Court decided that it was unnecessary to interpret Article 206.

With regard to Article 233(c) of the Customs Code, the Court observed that Article 233(c) only applies to goods declared for a customs procedure entailing the obligation to pay duties and the customs warehouse procedure being a suspensive procedure, does not fulfil that condition. Therefore it was unnecessary for the Court to consider whether the customs debt could be extinguished, as provided for in Article 233(c) of the Customs Code.

The second question

The Court noted that import VAT and customs duties display comparable essential features since they arise from the fact of importation of goods into the European Union and the subsequent distribution of those goods through the economic channels of the Member States. This parallel nature is, moreover, confirmed by the fact that the second subparagraph of Article 71(1) of the VAT directive authorises Member States to link the chargeable event and the date on which the VAT on importation becomes chargeable with those laid down for customs duties (see, *inter alia*, *Case C343/89 Witzemann [1990] ECR I4477*, paragraph 18, and *Case C230/08 Dansk Transport og Logistik [2010] ECR I3799*, paragraphs 90 and 91).

In accordance with Article 203 of the Customs Code, a customs debt is incurred at the moment when the goods, placed under customs warehousing arrangements, are removed from customs supervision, in this case, at the time of the theft of those goods. Therefore the Court held that the VAT became chargeable at the same time, pursuant to the second subparagraph of Article 71(1) of the VAT directive.

The judgment in *British American Tobacco and Newman Shipping* did not apply. That case concerned the chargeable event of a supply of goods for consideration. Harry Winston's case concerned the chargeable event of the importation of goods. Therefore, the judgment in *British American Tobacco and Newman Shipping*, to the effect that the theft of goods cannot be regarded as a supply of goods for consideration and thus cannot be subject to VAT, was not material.

Answers

The Court of Justice ruled:

> "1. Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, must be interpreted as meaning that a theft of goods placed under customs warehousing arrangements constitutes an unlawful removal of those goods within the meaning of that provision, giving rise to a customs debt on importation. Article 206 of that regulation is capable of applying only to situations in which a customs debt is liable to be incurred pursuant to Articles 202 and 204(1)(a) of that regulation.
>
> 2. The second subparagraph of Article 71(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the theft of goods placed under customs warehousing arrangements gives rise to the chargeable event and causes value added tax to become chargeable."

Comments

Harry Winston's challenge was to establish that there was no removal from customs supervision so that Article 203 did not apply. It failed; and therefore Article 206 did not apply; and therefore Harry Winston's *force majeure* contention was not considered by the ECJ. The French Court of appeal interpreting Article 206 found that the robbery amounted to *force majeure*; but they appear to have overlooked the precondition of Article 206, namely "irretrievable loss" specially defined in Article 206 as follows: "For the purposes of this paragraph, goods shall be irretrievably lost when they are rendered unusable by any person". Stolen goods are not usually rendered unusable by any person. Criminal acts such as riot and criminal damage are probably examples of *force majeure*; and when they result in the goods being unusable, Article 206 may apply.

The ECJ noted that Customs Code Article 206 distinguished between removal from customs supervision (Article 203) and nonfulfillment of obligation (Article 204); and explained that relief for irretrievable loss was only available in Article 204 cases. The same distinction appears in the derivation of Code Articles 202–206, namely Council Regulation (EEC) No 2144/87 on customs debt (Articles 2–4). The same distinction in turn appears in the derivation of Council Regulation (EEC) No 2144/87, namely Council Directive 79/623/EEC on customs debt (Articles 2–4).

Council Directive 79/623/EEC along with Council Directive 69/74/EEC on customs warehousing were interpreted by the ECJ in the case of *Esercizio* (a case concerning the theft of tobacco and whisky from a customs warehouse). In that case the ECJ drew attention to the ninth recital in the preamble to Regulation 79/623/EEC as follows:

"… except where the amount of the customs debt is paid or subject to the operation of a time bar in accordance with the provisions in force, the reasons for [the] extinction [of the customs debt] must be based on the recorded fact that the goods have not been used for the economic purpose which justified the application of import or export duties".

In *Butlers Ship Stores Ltd* [2012] UKFTT 371 (TC) the First-tier Tribunal gave a decision in an appeal by an innocent warehouse-keeper of despatch against excise duty assessments relating to spirits on intra-EU duty suspended movements which had disappeared due to fraud. The Tribunal was asked to interpret Article 14(1) of the Excise Directive 92/12/EEC which, like the customs provisions, exempts "losses occurring under suspension arrangements which are attributable to fortuitous events or force majeure". The Tribunal decided that what happened to the consignment of excise goods did not constitute losses within the meaning of Article 14(1). Therefore the Tribunal did not find it necessary to decide whether the circumstances of the case amounted to *force majeure*. Like the Court of Justice in *Henry Winston*, the Tribunal applied the reasoning in *Esercizio* (the determining factor being whether the excise goods had passed into the Community commercial circuit). Incidentally the Tribunal expressed its difficulty in concluding that loss due to fraud was loss attributable to abnormal and unforeseeable circumstances and thus to *force majeure*. Perhaps the French Court of appeal was affected by the brutality of the robbery.

Alternative relief

It may not be necessary to prove irretrievable loss (goods rendered unusable) in order to obtain relief. In cases of dishonest release of goods from duty suspension arrangements, where the duty debtor's liability is based on the provision of a guarantee, the debtor may be entitled to some relief.

In *Case C-506/09 P, Transnáutica*, upon the application of the Customs Code and the fundamental principles of EU, the ECJ held that it was not just to require the innocent transport company to pay duty incurred because of the dishonest diversion of goods moving in duty suspension under the external Community transit procedure. Because the customs authorities had erred in setting and monitoring the amount of the movement guarantee, it was not lawful to reject the innocent transport company's application for repayment and remission of duty.

Transnáutica illustrated the application of the fundamental principles of EU law that have been codified in customs law. Customs Code Article 239 (along with Article 220(2)(b)) codify the principle of legitimate expectation. In addition Code Article 239 provides a right and procedure for excusing nominal customs debtors where the Customs Code would otherwise result in residual unfairness.

Although *Transnáutica* proceeded upon the plea that there was a manifest error of assessment in the application of Article 239, it is arguable that the case is authority for the application of the fundamental principles of EU law that are codified within Article 239. The relevant principles were those pleaded by *Transnautica* (breach of essential procedural requirements, breach of sound administration and respect for the rights of the defence and proportionality); and in addition, the principle of legitimate expectation.

In *Transnautica* the Court of Justice found that there was a causal link between the lack of monitoring and the existence of the special situation. It was not necessary for the lack of monitoring to cause the debt.

It is arguable that such relief afforded to holders of movement guarantees is not limited to customs procedures.

The Customs Code does not apply to excise duties. But the fundamental principles of EU law do apply to the interpretation of the harmonised excise duties and their implementation. The Court of Justice has held that the principle of respect for the rights of the defence is applicable to the diversion of excise goods moving in duty suspension (see *Cipriani Case C-395/00*; a case where the excise assessment was unlawful because the period of notice given to the debtor under the statutory procedure was insufficient to respect the rights of the defence).

Excise movement guarantees are often found to be inadequate in amount. Where there was a dishonest diversion of excise goods and the guarantee was initially set below a level that would ensure the payment of the duty, it is arguable that the innocent excise duty debtor should be relieved.

Jeremy White
Pump Court Tax Chambers

CONTRIBUTORS

David Rudling and Alan Dolton
LexisNexis

Graham Elliot
Withers Worldwide

Peter Mantle
Monckton Chambers

John Davison
Independent Indirect tax consultant

Phil Rimmer
Director of M&R Tax Advisers Ltd

Jeremy White
Pump Court Tax Chambers

Subscription enquiries
LexisNexis Customer Services
Tel: +44 (0)84 5370 1234
Email: customer.services@lexisnexis.co.uk

Editorial enquiries
Halsbury House
35 Chancery Lane
London WC2A 1EL
Commissioning: Tanya Campbell
Technical: David Rudling
Production: Tanya Campbell

Printed and bound in Great Britain by Hobbs the Printers Ltd, Totton, Hampshire

Published 12 times per year: £476

ISSN 1363–9560

LexisNexis

FSC www.fsc.org MIX Paper from responsible sources FSC® C020438

ISSN 1363-9560
9 771363 956990 07