



KPMG's Indirect Tax Update

TAX

Highlights

Did HMRC really mean to imply that there can only be a supply if the recipient provides consideration (see the Business Brief 57/09 issued following the *Community Housing* decision)? The important message is that there must be a customer clearly identified to constitute a supply and there must be a quid pro quo of the customer paying consideration for the supply. In *Mohr* (C-215/94), the CJEC emphasised on the existence of a customer to constitute a supply. In a *BT* case ([1996] 1 WLR 1309), the Court of Appeal allowed HMRC's appeal finding an accidental overpayment paid under mistake of fact 'lacked the consensual element, i.e. a direct link to supply, required for consideration'. Article 73 of the VAT Directive 2006/112/EC when talking about the taxable amount refers to '...consideration obtained and to be obtained by the supplier...from the customer or a third party...' This stipulates that the person paying the consideration need not be the consumer. In this sense, HMRC is, although a little strict in wording but consistent, with the EC Directive and case laws. However this just shows how easy it can be in VAT matters to miss something vital by adopting a simplistic approach. VAT is not a simple tax, if it was, the VAT Act, Schedules and Statutory Instruments would not run to hundreds of pages.

One other interesting comment concerns the fact that a payback claim on change of intention can only be made if that change occurs after the end of the longer partial exemption period. This is presumably because any change during the longer period would be dealt with by the annual adjustment. This would seem to confirm that all input tax claims by a partly exempt body in a tax year are provisional until the adjustment is carried out, which may be helpful when determining the start point of a claim arising out of a partial exemption issue and hence when it goes out of time? If the claim is proper to the annual adjustment period and not the period in which the VAT was first incurred, that could give a taxpayer several extra months to make it. Of course the reverse is true when it comes to HMRC issuing assessments.

In the *RCI Europe* (RCIE) case, the ECJ has concluded that a timeshare exchange club only made supplies relating to property because property was the fundamental reason for the club's existence. Presumably the ECJ had, at the back of its mind, that if it had instead concluded that the supplies were taxed where the supplier belonged, relocation by the supplier to outside the EU would remove the supplies from the VAT net completely. This way the supplies were taxed in the EU if the property was in the EU, which was more in line with the concept that supplies should be taxed where consumed. The question remains of course, if you exchange your timeshare for another one, where is that service of exchange consumed?

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Logic might dictate it is consumed in the country where the new property that is obtained is located. However the ECJ, either for simplicity, or to resolve the problem of taxing an exchange fee paid where no suitable exchange could be found, (which might then be held as a credit against a later successful exchange for a property in a potentially different country from the one originally requested), viewed all the supplies as relating to the original property deposited by the club member in the property pool. This case perhaps begs the wider question around joining fees and subscriptions generally (in cases where, unlike *RCIE*, property is not the be all and end all of the club's existence). Should one look at the facilities that membership gives you the right to use and receive, and apportion the subscription on that basis, therefore taxing the subscription where the facilities are used? Or are HMRC right that, post *CPP*, there is a single supply of a right to join taxed under the default rule, where the supplier belongs? This latter approach would bring the supplier relocation issue back into play such that only non profit making bodies can apportion subscriptions, but then only by concession. The VAT Package changes will not solve this where club members are private individuals.

In the *Fallimento* case the ECJ was looking at a very important question concerning the interaction of domestic case law and Community law and principles. Should domestic principles generally be disapplied where their application gave a result contrary to Community law? The ECJ was considering whether legal certainty (that says decided cases set binding principles) prevented the Italian tax authorities from challenging what they perceived to be an abusive structure. The ECJ concluded that legal certainty in this case hampered the authorities unacceptably. However, the ECJ also recognised the importance of legal certainty as a tool and seemed to be content that, unless the circumstances were exceptional, as would be the case where abuse was being alleged, it should not be set aside.

As we know, HMRC as a general rule do not favour floor area based partial exemption methods (see the *Aspinalls Casino* case and the *Vision Express* case (opticians) where use of such a method was denied. This can be for a variety of reasons but generally the primary factor is the difficulty of identifying specific usage of set areas for wholly taxable or wholly exempt purposes. This makes floor area an unacceptable proxy for measuring the use of input tax. However in the *London Clubs Management* (LCM) case the Tribunal has decided that a floor area method gave a result that was more fair and reasonable than the current special method, (which was based on turnover with some tweaks to reflect the fact that some of the catering services were provided free) hence the appeal was allowed. The Tribunal was able to act in a full appellate role here rather than just deciding if HMRC had acted in a reasonable manner (a supervisory function). The main reason for the appellant's success seemed to be the fact that more than 70 percent of its residual VAT was property related, because it had taken on extra floor space in preparation for expected relaxations to gambling laws that were never implemented, making floor area a more acceptable proxy for use than it might otherwise have been. Unlike the old style casinos where the primary aim of customers was to gamble, LCM's food, drink and entertainment business was of equal importance to the gaming, in some ways it was competing with local bars and restaurants. The fact the proposed method recognised the free catering provided, (by apportioning catering VAT to reflect the free use proportion, before carrying the remaining VAT forward to the main calculation) was another factor in the appellant's favour, as was the exclusion of all mixed use, non designated and communal areas from the floor area calculation. This shows that each case should be considered on its merits. Just because someone who appears to operate a similar business has had something rejected by HMRC and has had its appeal dismissed, this does not mean that the outcome of an appeal by the different business will necessarily be the same.

From the Tax Authorities

Revenue & Customs Brief 57/09: VAT: Partial exemption - policy in respect of payback claims in the light of the High Court decision in *Community Housing Association*

HMRC has published a Brief following the High Court decision in the case of *Community Housing Association* (CHA). As well as providing guidance on partial exemption 'payback' claims it also makes comments about the basic requirements for a supply. Following the High Court case HMRC have accepted that CHA's recharge of certain costs under novation were taxable supplies of services.

CHA was a housing association providing exempt rental housing. CHA changed its structure by inserting a subsidiary between itself and suppliers. CHA raised an invoice to this subsidiary for works undertaken on as yet uncompleted building projects which CHA had paid its suppliers for. CHA then submitted a 'payback' claim on the basis that the input tax it originally incurred on the works in relation to exempt supplies was now attributable to the standard rated supply to its subsidiary.

The Tribunal originally found for HMRC on the basis that there were no supplies of services between CHA and its subsidiary and, if there were, the costs in question were not component costs of that supply but were costs of the ultimate exempt supply. The High Court overturned this decision finding that in fact CHA did make supplies and the supplies transferred useful material and rights arising from the old supplies received by CHA so the input tax was deductible. The Brief confirms HMRC are not appealing the case.

The Brief states a payback claim can not be made unless:

- the costs in question were not used as originally intended
- the change of use arises after the end of the partial exemption longer period (if there is one)
- the change of use results in taxable supplies or both taxable and exempt supplies if the original intention had been to make a wholly exempt supply

HMRC's conclusion makes some interesting comments on the basic requirements for a supply. These are:

- the recipient of the supply must receive some benefit
- he (referring to the recipient – see below) must provide some consideration
- the consideration must be paid in return for the benefit.

The Brief stresses the mere raising of invoices and passing of funds does not automatically create supplies and that careful analysis may be called for, especially if the companies involved are close associates. The reference to the recipient providing the consideration being a condition for a supply to exist in theory would mean that anything a third party pays for is not a supply (although this is assumed to be misleading drafting as opposed to an intentional distinction). In terms of what constitutes the cost components of a supply the Brief was less clear stating these 'will flow from an analysis of the nature of the supply'.

To read the Brief click [here](#).

HMRC Update: A general guide to landfill tax

HMRC Reference: Notice LFT1 (September 2009) The HMRC guidance relating to landfill tax has been updated. The most notable change relates to the tax liability of material used on landfill sites. There are also new sections:

- Paragraph 2.5 – highlights which landfill site activities are specified as being subject to tax
- Section 7 – introduces information areas - a designated area of your site for non-taxable uses of waste to take place
- Section 20 – has links to the landfill tax return and completion notes

The changes are highlighted in section 1.2 of the guidance. Click [here](#) for the updated guidance.

Paying HMRC - change of HMRC bank account details

On 3 September 2009 HMRC bank account details for paying the following duties change:

- Insurance Premium Tax
- Climate Change Levy
- Landfill Tax
- Aggregates Levy

You will need these new account details when making a payment to HMRC. Click [here](#) for further details.

New learning available on inaccuracy penalty

A simple e-learning module is available to help agents and taxpayers understand how the new penalties for inaccuracies will affect them. This penalty system is being extended to Environmental Taxes, Excise Duties, Inheritance Tax, Insurance Premium Tax and Stamp Duties.

Click [here](#) to access the learning module.

Gibraltar: Tax Information Exchange Agreement (TIEA)

A Tax Information Exchange Agreement, covering both direct tax and indirect tax, between the United Kingdom and Gibraltar was signed in London and in Gibraltar. The new TIEA with Gibraltar will enable the UK and Gibraltar to exchange information to the OECD and international tax standards to ensure that the right amount of tax is paid in each country in the future. Click [here](#) to read the agreement.

News

Commission release agreed expenditure code list for new VAT refund procedure

HMRC have now confirmed that the Commission, with input from all Member States, has now agreed the list of expenditure codes for the new Eighth Directive VAT refund procedure. HMRC's guidance had previously detailed the 10 Expenditure code types. This definitive list provides sub codes and sub-sub-codes for use from 1 January 2010. The list is extensive as it has had to accommodate the requirements of all Member States. HMRC have confirmed the UK portal will have a series of drop-down menus showing the codes and narrative to assist data input. HMRC released the code list to all the interested parties, if you would like a copy of it please contact your usual KPMG contact. HMRC are holding a demonstration of the VAT refund system on Thursday 17 September and KPMG will be attending.

Proposal for Regulation on administrative cooperation and combating fraud in the field of VAT

The Commission has adopted a regulation on administrative cooperation and combating fraud. The proposal is a complete recast of Regulation 1798/2003 which is the reference Regulation for administrative cooperation on VAT issues and was introduced with the aim of making improvements including:

- Clearer and binding rules governing cooperation between Member States
- More direct contacts between services with a view to making cooperation more efficient and faster
- More automatic or spontaneous exchanges of information between Member States in order to combat fraud more effectively.

The recast regulation is aimed at adding more effective measures to tackle cross-border fraud and better collection of VAT where the place of supply is different to that of establishment of the supplier. It is also intended to make the regulation more coherent. The proposed changes in summary are:

- Member States' responsibility in the field of administrative cooperation is extended to protect the VAT revenue of all Member States
- The information that Member States must collect and make available to other Member States through an electronic database system is precisely defined. The Regulation also defines access rights to this information in terms of persons and situations
- A permanent framework is established to guarantee the quality of the information in the databases by laying down common rules on the information to be collected and the checks to be carried out when a VAT identification number is registered in the database. The Regulation specifies the cases in which certain information must be deleted from the databases. It also includes provisions under which Member States are mutually responsible for any erroneous information in their databases or failures to update such information in good time
- Member States are required to confirm by electronic means the name and address associated with a VAT number. Users are also given guarantees concerning the reliability and use of such information
- A legal basis is created for establishing a structure for targeted cooperation to combat fraud. This structure will make possible multilateral, swift and targeted exchange of information so that Member States can respond adequately and in a coordinated fashion to combat any new kinds of fraud that emerge. It will be able to draw on jointly organised risk analysis

To read the proposal in full click [here](#).

Report on the application of Council Regulation (EC) no 1798/2003 concerning administrative cooperation in the field of VAT

At the same time as the Commission adopted the above proposal it has also released a report sent to the European Council and European Parliament regarding Council Regulation No. 1798/2003.

The report concludes the intensity of the administrative cooperation between Member States to cope with intra-Community VAT evasion and fraud is still unsatisfactory. In order to improve the practical functioning of administrative cooperation arrangements a number of changes should be made to the management support and organisation of the tax administration. These include:

- An appropriate number of resources should be allocated to administrative cooperation and tax controls
- Training should be provided for tax officials to raise their awareness with regards to the instruments available (requests, presence in administrative offices, participation in administrative enquiries, simultaneous controls) and the spontaneous exchange of information
- A proactive and open-minded approach should be adopted towards the application of the instruments available and obstacles should be avoided at national level which could hamper the functioning of the administrative cooperation and undermine the efficient use of the instruments
- Local officials should be given instructions on how to prioritise the requests for information
- The software should be adjusted in order to use the XML-format for sending requests
- Efficient procedures should be implemented to collect data to be exchanged
- Direct contacts between local tax auditors should be encouraged (via CCN mail II bis)

The report pointed out such recommendations are not new and the fact that they need to be repeated is a 'worrying signal as it concerns the level of follow up that has been given to them in the past.' The report adds willingness has to come from the Member States but the Commission is prepared to provide its assistance to these efforts.

To access the report click [here](#).

Commission Report on recovery of taxes through the procedures of mutual assistance between Member States

The Commission has released a report on the use of the mutual assistance provisions between 2005 and 2008. The report has found such amounts of tax due, recovered under these provisions have increased six fold between 2003 and 2008. However the report concludes the amounts recovered are still very low with available data suggesting only five percent of amounts claimed are actually recovered. The Commission calls on the parties involved to conclude the ongoing negotiations on changes to the Directive to strengthen the recovery instruments available. To read the press release click [here](#) (see third note) or to access the report in full click [here](#).

BBC: scrappage scheme lifts car sales

BBC.co.uk reported on 4 September 2009 that the UK scrappage scheme continued to help new car sales in August with sales up four percent from a year ago, the second consecutive month of growth.

Germany's five billion euro car scrappage scheme has now ended after helping two million motorists, due to the government funding running out. The report states that sales in Germany were up 28 percent from a year ago in August.

To read the article in full on the UK scrappage scheme click [here](#) and the German scheme [here](#).

In the Courts

Judgment C-37/08 – RCI Europe – Place of supply of subscription, enrolment and exchange fees paid for timeshare exchange – all where existing timeshare is held

Background

RCI is a UK company which facilitates and organises the exchange of timeshare interests held by its members in holiday homes abroad, many of which are located in Spain. The scheme is known as 'RCI Weeks.' Under the scheme holiday resort developers are invited to become 'affiliates'. Individuals who own or purchase timeshare interests at those resorts can become members of the scheme. Individuals make a number of payments to RCI:

- An enrolment fee which covers one to five years
- An annual subscription
- An exchange fee on request for an exchange

The exchange is essentially a refundable deposit made when making a request for timeshare weeks. Should RCI be unable to identify an acceptable exchange, the fee will be held against a future request or refunded on request.

HMRC took the view that UK VAT was chargeable on all enrolment and subscription fees. With regards to the exchange fee HMRC considered this as falling under the Tour Operators Margin Scheme (TOMS) and therefore subject to VAT under the margin scheme when the property in question was located within the EU. To complicate matters the Spanish authorities took a different view, that the services were connected with immovable property therefore subject to Spanish VAT. The AG was earlier of the opinion that the subscription and enrolment fees were supplied where the supplier was established. With regards to the exchanges fees the AG was of the opinion that the supplies either fell under TOMS or where the immovable property was located.

The Judgment

The Court noted that it was not immediately clear as to what actual services RCI was supplying but on receipt of the subscription and enrolment fees RCI undertakes to provide in the future the service required by the member. The Court referred to *Kennemer Golf Club* which concerned annual golf club subscriptions and found such upfront payments constituted consideration for the services of the golf club even though members who do not use or do not regularly use the association's facilities must still pay their annual subscription fees. The court came to the view that it follows that the enrolment and subscription fees must be regarded as constituting consideration for RCI 's supply of participation in a system to enable each member to exchange his timeshare right.

The Court went on to look at Article 9(2)(a) of the Sixth Directive. This exception to the normal rules changes the place of supply of certain services connected with immovable property to where the property is located. The Court drew the distinction from a rental from a travel agency on the basis the consumer is not paying for a holiday but for RCI's service of facilitating the exchange of his right to his timeshare. The Court went on to conclude that this service is between RCI and the consumer and is connected to the property over which the consumer has a timeshare right. Whilst not specifically referring to the AG the Court did say that if such services were treated as supplied where the supplier is established under Article 9(1) it would be easy for an operator to relocate and avoid VAT. Having reached the conclusion that both the enrolment and subscription fees were consideration for facilitating the exchange the Court came to the same place of supply conclusion for exchange fees themselves. In answering the questions referred from the UK VAT Tribunal the Court has responded that the place of supply for all the supplies made by RCI is where the customer holds his existing timeshare rights.

Summary

One of the interesting parts of this case is that the Courts conclusions were different from any of the submissions. As well as RCI and the UK Tax authorities, submissions were made by Spain, the Hellenic Republic and as always the Commission. In fact it was these other parties' views which were closer to the decision, linking the subscription and enrolment fees to the property being exchanged. The part of the decision which no one else agreed with was the linking of exchange fee with where the original timeshare interest is held, rather than the timeshare obtained. The Judgment refers to the logic of taxing services as far as possible in the place of consumption but many would have considered this to be where the timeshare obtained is enjoyed.

The timeshare market is a very consolidated market so this will only impact a small number of operators. Any direct impact of the case will also depend on the current VAT treatment of suppliers. The Judgment confirms for example that RCI changed its VAT treatment from 1 Jan 2004 when it stopped accounting for UK VAT on its enrolment and subscription income from members whose holiday usage rights relate to timeshare properties in Spain. They also stopped accounting for UK VAT on exchange fee income that it received from members who exchanged their holiday usage rights for equivalent rights in a Spanish property. HMRC will be clearly disappointed with the decision on the basis that they were arguing that the place of supply was where RCI was established (i.e. the UK). The most interesting impact will be on the exchange fees which contrary to the views of all the interested parties, the Court found to be linked to the country where the customer holds their original timeshare. As a result the exchange fee paid by a non EU timeshare holder (i.e. Turkey) for use of a property in the EU will result in no EU VAT being charged even though he will holiday in the EU as a result of paying that fee. Given there are two exchange fees being paid by people potentially holding timeshare interests in one country and exchanging them for interests in another country, both with different VAT rates, the Judgment will result in some interesting place of supply discussions.

To read the judgment click [here](#).

Judgment C-2/08 – Fallimento Olimpclub – whether legal certainty trumps Community law when incompatible with each other – sometimes but not always – taxpayer loss

This is a case about legal certainty (*res judicata*). The Italian Civil Code prescribes that findings made in Judgments that have acquired the force of *res judicata* (ie the issue is no longer being appealed) shall be binding in all respects on the parties, their lawful successors or assignees. This had been interpreted by the Supreme Court as meaning that in tax disputes, where a final judgment drawn up by another court in a case on the same subject contains a finding on a fundamental issue common to other cases, it has binding authority as regards that issue, even if it was drawn up in relation to another tax period.

The question referred to the ECJ asked whether Community law precluded the application of *res judicata* where the application of that provision would lead to a result incompatible with Community law, thereby thwarting its application, in particular in matters relating to VAT and with respect to the abuse of rights to obtain undue tax savings.

The issue in *Fallimento* concerned whether a contract was genuine, lawful and non fraudulent. The effect of that contract was to secure exemption for sporting services by use of a non profit making organisation to supply those services, despite the fact that the income of that organisation was then stripped out into a profit making body under the terms of the contract. The tax authorities alleged this was abusive, but *Fallimento* cited *res judicata*, because there had been judgments issued by a regional court, in respect of other tax years, that the contract was lawful and genuine.

The ECJ recognises that it is important for stability that judicial decisions which have become definitive can no longer be called into question. Community law does not require a national court to disapply domestic rules of procedure that confer finality on a decision, even if to do so would make it possible to remedy an infringement of Community law on the part of that decision.

However in *Fallimento* the ECJ was considering whether the Italian interpretation of *res judicata* contravened the principle of effectiveness by making it excessively difficult to exercise rights conferred by Community law. The ECJ concluded that the Italian interpretation meant that if a judicial decision that had become final was based on an interpretation of the rules concerning abusive VAT practice that was at odds with Community law, the rules would continue to be misapplied each year and the member state would be powerless to rectify this. The ECJ viewed this as too extensive an obstacle to the application of the Community rules on VAT, and therefore concluded that legal certainty did not justify the approach taken by the Italians to *res judicata*, as this was contrary to the principle of effectiveness.

It seems therefore the ECJ is content that legal certainty can be set aside in certain cases where, if it was applied, it would prevent a Member State from tackling an abusive practice. However the ECJ has not said that legal certainty created by local decisions is always trumped by Community law. This is good news otherwise we would live in a perpetual state of uncertainty that later ECJ decisions overturn earlier UK ones.

To read the judgment click [here](#).

Amendment to ECJ Judgment C-288/07 – Isle of Wight and Others

The ECJ has released an amendment to correct an error in the English language version of this case. The amendment simply changes reference to bodies governed by 'private' law to 'public' law. This error was made twice, firstly in paragraph 53 and secondly in the first of the three responses at the end of the Judgment. The decision has been updated on the ECJ website.

It is still not clear when the *Isle of Wight* case will be heard in the UK. As previously reported following the ECJ's response the High Court concluded that the Tribunal had not established the facts that would allow a conclusion on whether the parking activities would lead to significant distortions of competition. Whilst not explicitly stated the main reason for this would appear to be the VAT Tribunal's localised tests. As a result the court allowed HMRC's appeal and remitted the case back to the Tribunal. We have no indication as yet when the Tribunal hearing will take place.

To access the order, click [here](#).

VAT Tribunal Cases

UKFTT 154 – London Clubs Management Limited - Whether floor based special method fair and reasonable – yes – appeal allowed

London Clubs Management Limited (LCML) operates 11 casinos in the UK generating a mixture of standard rated and exempt income. The existing method dated back to 1 April 1993. This method was a turnover based method with residual VAT being apportioned based on taxable supplies over total.

The new method included apportioning input tax on catering based on a ratio of chargeable to chargeable and non chargeable supplies to reflect drinks given away free to customers on the casino floor. The remaining input tax was then apportioned on a floor based method. This firstly added as the numerator the total floor space for making supplies of food and beverages, taxable gaming, poker rooms and entertainment areas. The denominator is the total food and beverage space, total gaming space plus the full taxable poker and entertainment areas. Importantly the denominator excludes communal or mixed areas that have not been specifically designated.

The Tribunal set out that it must consider first if the proposed special method is fair and if it is, then it must consider whether it is fairer than the existing method. The Tribunal accepted that whilst gaming can generate higher turnover and profit per square foot compared to catering this does not mean gaming is the principle user or consumer of costs. The Tribunal added this is not affected even if certain parts of the business (i.e. food and beverages) make a loss, they are still a cost component of the business. The fact that catering activities are used to encourage gaming was also considered to be reflected in the new method. The Tribunal was also happy that the method would reflect any change in use of an area and that the areas were sufficiently clear to be reasonably reflected in the formula. The costs themselves were predominately property related. The Tribunal noted in its background how the business has planned its strategy following the Budd Report (Gambling Review report) in 2001 which included recommendations on the relaxation of marketing rules and an increased permitted number of slot machines. However the final Gambling Act 2005 reduced the number of permitted slot machines and left the group with excess space it had taken in anticipation of the changes. The Tribunal considered LCML's floor based method was in fact a good proxy for such property costs. Whilst the method is not as good a proxy for remaining costs this does not mean the method itself was not fair and reasonable and no evidence was presented that such costs were distortive. HMRC referred to both *Vision Express* and the *Aspinalls Club* Tribunal's but the Judge was happy to distinguish these from the current case.

Content that the method was fair and reasonable, the case goes to compare the proposed method with the existing one and importantly whether it is more fair and reasonable. In deciding which is the fairest method the Tribunal dismissed quickly the taxpayers argument that whilst VAT is excluded on taxable supplies, gaming duty (which can be up to 50 percent) is not excluded from the exempt supplies. The Tribunal noted the issue around the fluctuation in exempt income (and under the existing method the potential fluctuation in VAT recovery) but the Tribunal did not base its decision on this point. The Tribunal reached its conclusion that the proposed method is fairer on the basis that as residual costs are predominantly property related, the turnover based method does not provide as coherent a proxy as the proposed floor space method.

The proposed method takes account of the economic use of the floor space (by apportioning the food and beverage floor areas between chargeable and non chargeable catering) in a way the existing method fails to do. The treatment of non property related costs was considered neutral between the methods. Therefore the taxpayers appeal was allowed.

To read the case in full click [here](#).

UKFTT197 – British Sky Broadcasting Group Plc and Pace Plc

This decision merely announces a direction confirming that the two above cases which both raise substantially similar issues will be lodged with the ECJ. It is our understanding that this case relates to the customs classification of the set top boxes.

Click [here](#) for the case.

ECJ Diary

This week's cases are:

Wednesday 9 September

Hearing C-461/08 – Don Bosco Onroerend Goed

This case concerns the liability of the supply of a 'transformed' building. The referring Dutch Court asks whether Article 13B(g) in conjunction with Article 4(3)(a) of the Sixth Directive should be interpreted as meaning that VAT must be charged on the supply of a building which has been partly demolished with a view to the replacement of that building with a newly constructed building? The reference goes on to ask if it is relevant whether the order is given and/or the plans for the new building drawn up, by the purchaser or the vendor? The final question asks if VAT is charged, must VAT be levied on any supply thereafter? Click [here](#) to read the questions in full.

Thursday 10 September

Opinion C-262/08 – CopyGene A v S

This case concerns whether CopyGene's services of stem cell collection, transportation, analysis and storage of umbilical cord blood are exempt. The Commission's view at the hearing was that transactions 'closely connected' with hospital treatment should only be those services which are logical parts of hospital and medical treatment, and are unavoidably part of those services. The Commission added this did not include the services of recovery, transport, analysis and safe keeping of blood from umbilical cords. Click [here](#) to read the questions referred.

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