



KPMG's Indirect Tax Update

TAX

Highlights

The long awaited decisions in *Copygene* and *FHT* will have been a disappointment to the businesses operating in this new area of stem cell extraction and preservation. Despite the fact that the only reason for extracting and keeping these cells is a medical one, (in case they are needed at a later time in the course of the provision of care), the ECJ was not convinced that exemption could apply. It would seem that the uncertainty surrounding whether any care would actually ever be provided was the barrier to exemption here. It may be that these establishments can amend their contracts so that they provide some sort of diagnostic analysis when the cells are taken, which the ECJ suggested might be viewed as an action to protect the future health of the child. This decision is yet another reminder that the ECJ tends to apply exemptions strictly and narrowly.

In the *Leo Libera* decision, the ECJ was content that Germany could tax more than 50 percent of gambling supplies, even though the Directive clearly envisages exemption as the default position for betting and gaming. The get out of jail clause for Germany here though is the discretion allowed to Member States in the way they apply this exemption. Essentially, gaming is only exempt because it is hard to value the supply and tax it – there is no public or social interest arising from the application of the exemption. The ECJ was content that taxable gaming machines are not similar forms of gaming to the exempt supplies and are not in competition with the exempt supplies. This is an interesting look at the concept of equal treatment and competition and what is meant by 'similar' supplies.

In the *MacDonald Resorts* Hearing the Commission was sensible to the scope for VAT planning/avoidance that would be created if the timeshare related points rights supplies were taxed where the supplier belongs, and supported the view that they were land related.

The first *Fleming* claim Tribunal cases are being released, and the balance of probabilities test will no doubt occupy the Tribunals for some time to come. In the *Paul Johnson* case, HMRC's approach seems reasonable as there was no evidence that the percentage of turnover which related to exempt tuition had been much higher in earlier years than it was subsequently.

The AGO in the Polish reduced rate infringement proceedings may have come as a bit of a shock to the Commission. Although Poland may have relieved children's clothes in 1991 as Article 115 envisages, Poland was not a Member State in 1991, so the big question is, should Article 115 apply to it? The Advocate General clearly thinks it should.

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The *Schmelz* ECJ case could have a bearing on the UK's registration rules. Relief from registration for small businesses is obtained under Article 283 of the Directive and the UK applies the generous registration limit equally to UK established and non UK established taxpayers. If the ECJ decides that the relief can only apply to established taxpayers this could impact on overseas suppliers making supplies in the UK under the limit, who can not shift their VAT liability to their customers. The issue of how you define what is a small business may also be relevant – do you look at total turnover in every Member State where supplies are made or only in the Member State where the relief is sought?

Finally, the Budget is next week. Still no word on VAT but a rise at some point must be better than even money? Assuming the same anti forestalling provisions apply as last time, and that these apply from the date of the announcement of any rise, this leaves little room for manoeuvre for supplies in excess of £100k that will be made after any rate change, unless businesses pre invoice or make valid prepayments now, while the anti forestalling provisions are not extant. However this in itself is not free from risk. If a VAT invoice is issued, the VAT has to be paid to HMRC – will the customer pay that VAT in time? If you prepay, can you be sure that the services will be supplied, and is the VAT saving worth it if the rise is only 2.5 percent (though for individuals of course this is greater than the interest they could earn on spare money)? Greater savings would arise if HMRC changed any of the zero rate supplies and taxed these at five percent (food, children's clothes, printed matter, new houses), or removed reduced rate five percent reliefs and made these supplies standard rated. However all such actions would be hugely politically sensitive as the Treasury treads that fine line between purposefully tackling the deficit and not putting us back into recession. What businesses could usefully do is think about rate change housekeeping points now; e.g. what caused problems last time, how can customer expectations be managed without creating costs for the supplier, and, if VAT is a cost, are they geared up to take the necessary steps to ensure that, where the lower rate can be secured on purchases, that rate is applied by their suppliers?

Headlines

Judgments –CopyGene (C-262/08) and Future Health Technologies (C-86/09) – supplies by private stem cell banks - services not covered by medical exemption

Background

CopyGene and Future Health Technologies (FHT) are private umbilical cord stem cell banks in Denmark and the UK respectively. Their services include the collection, transportation, analysis and storage of umbilical cord blood cells. The cells may be released at a future date if required for medical treatment. Stem cells are immature cells capable of reproducing themselves and of renewing other specialised cells in the body and can be used to treat diseases in which special cells are absent or have been destroyed. This area of medical science is relatively new and scientific knowledge in this field is constantly evolving. In both cases the taxpayers are arguing that such services are exempt under what is now Article 132(1)(b) of the VAT Directive which requires Member States to exempt:-

“b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;”

FHT also asks if it is accepted that, where services are carried out by or under the supervision of one or more suitably qualified medical professionals, whether these services are covered by Article 132(1)(c). The article requires Member States to exempt “the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member States concerned”. *CopyGene* also looked at the definition of other duly recognised establishments of a similar nature. In *FHT* it was not disputed that they were such an establishment.

The Judgments

'Hospital and medical care' – both Judgments noted that established case law has found that Article 132(1)(b) covers all services supplied in a hospital environment while Article 132(1)(c) covers medical services provided outside such a framework (for example at the private address of the person providing the care and at the patient's home). It has also been found that the concept of 'medical care' in Article 132(1)(b) and that of 'the provision of medical care' in 132(1)(c) are both intended to cover services which have as their purpose the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders.

The Judgments almost identically referred to the fact that, whilst the detection of illness may be one of the possible purposes for collecting the cord stem cells, the services seek only to ensure that a particular resource will be available for medical treatment in the uncertain event it becomes necessary. They do constitute services seeking to avert, avoid or prevent disease and therefore are not covered by the expression 'hospital and medical care'.

Both Judgments did add that if the referring courts conclude that the analysis of umbilical cord blood is actually intended to enable a medical diagnosis to be made and does not merely form part of the testing of the stem cells for viability, then such services are capable of being considered as diagnostic care and falling within the exemptions set out in Article 132(1)(b).

'*Closely related to hospital and medical care*' – In *CopyGene*, the Court noted it had previously been held that services fall within the concept of 'activities closely related' to hospital or medical care only when they are actually supplied as a service ancillary to the hospital or medical care received by the patients in question. In order to create a sufficiently close enough link, the Court concluded it would require that the state of medical science in the future enables or requires the use of cord stem cells. Secondly, the Court stated that in the majority of cases, where patients do not fall ill, there will never be a principal exempt service of hospital and medical care. Therefore the Court concluded that the services were not covered by the expression 'closely related activities' under Article 132(1)(b). *FHT* reached the same conclusion, directly referring to the *CopyGene* Judgment.

'*Other duly recognised establishments*' – The Judgment in *CopyGene* concluded that the Directive cannot be interpreted as requiring the authorities to refuse to treat a private stem cell bank as a duly recognised establishment for the purposes of Article 132(1)(b). However the authorities are not precluded by the Directive from refusing to recognise such an establishment either.

To access the Judgment in *CopyGene*, click [here](#).

To access the Judgment in *FHT*, click [here](#)

ECJ Judgment – Leo Libera (C-58/09) – Taxation of gaming machines compatible with Directive and does not breach principle of fiscal neutrality

The ECJ has released its Judgment in the *Leo Libera* case. This is another case considering the compatibility of the different VAT treatment applied by Germany to different forms of gambling. Readers may recall the *Linneweber* ECJ case ([C-453/02](#)). This case found that the different treatment of the same supplies of gaming, depending on whether the location of a gaming machine was in a public licensed casino, infringed the principle of fiscal neutrality. Following this case, the German law was amended to only exempt betting on public horse racing, fixed odds betting, lotteries and draws regardless of their location. However all gaming machines remain taxable.

Leo-Libera operates a gaming hall containing gaming machines. They argue that under Article 135(1)(i) of the Directive, Member States are precluded from only exempting betting and lotteries and they must exempt other forms of gambling such as gaming machines. Article 135(1)(i) requires Member States to exempt 'betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State'. The Court began by noting the established principles that exemptions should be interpreted narrowly and must observe the principle of fiscal neutrality. Turning specifically to betting and gaming the Court added that exemption is actually based upon practical considerations as opposed to being services in the public interest. The Court found that Article 135(1)(i) provides Member States with a broad discretion which Member States may use to leave outside of the exemption betting which from a practical perspective lends itself to the application of VAT. More than 50 percent of Germany's gambling turnover is taxable but the ECJ had no problem with that.

The Judgment also makes some interesting comments (para 34 onwards) on fiscal neutrality. In dismissing the taxpayer's argument it seems to conclude that the exempt and taxable forms of gambling are not similar services in competition with each other, given the small value of exempt income by comparison to the total turnover in the sector.

To read the Judgment, click [here](#).

ECJ Hearing - C-270/09 - Macdonald Resorts Limited – Report for the Hearing

Background

Macdonald Resorts Ltd (MRL) runs a timeshare resort operation including selling timeshare interests in properties both in the UK and in Spain. MRL accounted for VAT at the standard rate for properties less than three years old, and exempted other properties. MRL set up a club whereby its customers could choose to exercise their 'timeshare right' in a variety of properties for varying amounts of time. Under the constitution of the club, on the payment of consideration (either by cashing in existing timeshare rights in properties or paying cash) members were issued with points. These gave the individual corresponding occupancy rights (right to exclusive use and occupation) of the club accommodation. In the UK Tribunal HMRC successfully argued that at the point of supply MRL's customers were paying for membership rights and therefore VAT was charged at the standard rate (supply taxed where MRL belonged) adding that there could be no grant of an interest over land. On appeal to the High Court the case was referred to the ECJ.

The Questions

The High Court referred a number of questions concerning the characterisation of the supplies. The third and final question specifically asks whether the services are connected with immovable property within the meaning of Article 9(2)(a) of the Sixth VAT Directive (now Article 45 of Directive 2006/112). If so, it asks how the place of supply is to be determined when it is not known at the time of supply where the accommodation which will be occupied is located. To see the questions in full, click [here](#).

The Responses

MRL

The supply of 'Points Rights' is not to be characterised as membership of a club, but instead as either the leasing or letting of immovable property within the meaning of Article 13B (b) of the Sixth Directive (now Article 135(1)(1) of Directive 2006/112) or as a 'supply of services connected with immovable property' within the meaning of Article 9(2)(a) of the Sixth Directive (now Article 45 of Directive 2006/112). MRL add that separate consideration must be given to Points Rights supplied pursuant to a) Enhancement Contracts and Resale and Enhancement Contracts, and b) Points Sales Contracts. In the case of Enhancement Contracts and Resale and Enhancement Contracts, the place of supply is the country in which the property whose title is deposited by the member with the Trustee of Options is situated, i.e. where the member's original timeshare is located. In the case of Points Sales Contracts, the property with which the Points Rights supply is connected is the entire Options scheme property portfolio, which in this case is apportioned between the UK and Spain based on aggregate values of the properties at the time when the Points Rights are supplied.

UK

A strict interpretation of leasing or letting of immovable property in accordance with settled principles of Community law and the requirements of the VAT system must be applied. As such, in order to be considered a lease or letting, the supplies must involve the provision of the right to occupy property as if the recipient of the supply was the owner of the property, and this must be for an agreed period. As neither of these characteristics exists at the time of the supply, the transaction cannot be characterised as the leasing or letting of immovable property. If Points Rights fall outside Article 13B(b) then it is a standard rated supply of services and therefore irrelevant whether the supply is characterised as club membership or otherwise. The fact that the relevant property may not be known, or even exist in the portfolio, at the time the Points Rights are supplied, demonstrates a lack of connection between that supply and the final property occupied. This is reinforced by the fact that the holder may not use his/her Points or may exchange them for other benefits. This case is not comparable with *RCI* because potential access to the property pool is not, as it was in *RCI*, offered as an ancillary benefit, but is instead the primary purpose of the transaction.

The Commission

Where Points Rights are redeemed for the use of timeshare properties, there is a sufficient connection with immovable property and, under Article 9(2)(a) of the Sixth Directive, the place of supply is the location of the property whose use is provided to the points holder.

The supply of Points Rights should be treated for VAT purposes the same way as the services for which the points are redeemed. The scenarios under question 2 do not change the Commission's view, as long as the Points Rights are redeemed for the use of timeshare properties or hotel accommodation. Where the accommodation is timeshare accommodation or hotel accommodation in more than one Member State, the taxable amount should be apportioned with regard to the properties available in the pool, and the extent to which Points Rights are redeemed for hotel accommodation.

Other Submissions

Both the Greek and Portuguese Governments consider that the supply of Points Rights in return for the surrender of timeshare rights or a sum of money, is in fact a provision of accommodation in the hotel/tourist sector and does not therefore come under the scope for exemption for leasing or letting of immovable property.

The Portuguese Government is of the opinion that the services can only be classified for VAT purposes from the moment in which the location of the accommodation is known. The place of the supply is the location of the accommodation – i.e. where consumed. The Greek Government is of the view that where a taxable person makes supplies of the services described in questions 1 and 2, these are 'services connected with immovable property' within the meaning of Article 9(2)(a) of the Sixth VAT Directive (now Article 45 of Directive 2006/112). Where the place of accommodation is not known at the time the Points Rights are supplied, then the place of supply should be where the supplier has established his business.

Summary

Whilst it is impossible to take a view on the outcome of this case at this stage, it is interesting to read the views of the Commission. The Commission has taken the opinion that there is a clear and definite link between the supply of Points Rights and immovable property where the Points Rights are to be redeemed for the use of timeshare properties. Furthermore, the Commission bears in mind the provisions of Article 9 of the Sixth Directive in that, as far as possible, taxation should take place where goods and services are consumed. The differing views from the UK, Portuguese and Greek Governments highlights the complexity of the issue and it will be interesting to see which viewpoint the Court takes.

ECJ Hearing in RBS Deutschland Holdings (C-277/09) is on Thursday 17 June

This is a reminder that the Hearing in this case takes place this Thursday. The case involves the supply of leased cars which, due to differences in different domestic legislations, resulted in non-taxation of rental payments. The UK VAT Tribunal allowed the taxpayer's appeal, finding the UK tax authorities were wrong to refuse input tax credit on the purchase of the cars and that the arrangement was not abusive. To read the questions referred in full, click [here](#).

First Tier Tribunal – Paul Johnson – Fleming claim submitted on higher basis than original claim – claim 'without rational and evidential foundation' – appeal dismissed

Background

This case concerns the amount of a repayment claim for over declared output tax on golfing tuition going back to the early 1980's. Paul Johnson was a golf professional who received income from a variety of sources including a percentage of green fees, sales from the golf shop, a retainer from the club and tuition fees.

A previous capped claim was submitted in 2000 for over declared VAT on tuition fees. Information given by the taxpayer at the time suggested that tuition fees represented 7.14 percent of total income and HMRC paid a claim on this basis. Following the House of Lords decision in *Fleming* and *Condé Nast* a further claim was submitted for periods in 1996 back to 1981. This second claim calculated the percentage of tuition fee income at 18.15 percent for earlier periods dropping to 16.73 percent for later periods. In the absence of evidence to support this higher percentage, HMRC repaid the claim but only on the basis that tuition represented 7.14 percent. The taxpayer appealed.

The advisor who had compiled the claim had since retired and was therefore unable to explain the background to the calculations.

The taxpayer did argue that his teaching commitments had reduced from 1996 when he employed another professional and assistant and secondly shop sales were higher in the late 1990's as the economy came out of recession.

Decision and Judge's comments on evidence

In reaching his decision, the Judge noted that the obligation was on the taxpayer to prove on the balance of probabilities the quantum of his repayment claim. In this case the Judge found the disclosure was 'without rational and evidential foundation'. The Judge was keen to point out that HMRC had given the taxpayer the opportunity to substantiate the claim. Furthermore he noted that HMRC had not rejected the claim in its entirety and as well as disallowing an element for a period when the taxpayer was not registered, the claim was adjusted upward to reflect the higher rate of VAT. The Tribunal was satisfied that the approach adopted by HMRC was reasonable and consistent with previous claims made by the taxpayer. The appeal was dismissed.

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

News

Confirmation that HMRC have appealed BAA to the Upper Tier Tribunal

The Upper Tier Tribunal has updated its Hearing list. This latest version confirms, as expected, that HMRC have appealed *BAA* to the Upper Tier Tribunal. No Hearing date has been set. The original Tribunal concluded that a bid vehicle was involved in economic activities (strategic governance and direction of its subsidiaries) even though it made no supplies. This allowed the taxpayer to claim the VAT it incurred on the takeover costs before the acquisition went through and before it joined the BAA VAT group. The Tribunal was content that there was a sufficient link to the outputs of the group. For more details on the case please see our client alert sent earlier this year – click [here](#).

Budget 22 June - speech moved to 12.30

A motion was tabled and passed for Parliament to meet at 11.30am on 22 June and references to specific times in the House shall apply as if it was a Wednesday. This means the Chancellor will deliver his speech at 12.30pm as opposed to 3.30pm. To access our Budget website, click [here](#).

In the Courts

ECJ – AG's Opinion – Commission v Poland (C-49/09) – Poland's reduced rate on babies' clothing and children's footwear is not compatible with the Directive

This is the Commission's infringement proceedings against Poland for applying a reduced rate on the intra community acquisition of babies' clothing and children's footwear. The Commission argue that such items are not covered by any category within Annex III and Poland has no other derogation to support such treatment.

The Opinion is available in a number of languages but not English. However from a rough translation it would appear that the Commission had their application rejected. The Advocate General was of the opinion that Poland is entitled to apply a reduced rate to such items under Article 115 of the VAT Directive. Article 115 allows Member States which were applying a reduced rate to children's clothing, children's footwear or housing as at 1 January 1991, to continue to do so.

To access non English versions of the Opinion, click [here](#).

ECJ Hearing - Repertoire Culinaire Ltd (C-163/09)

This case is an appeal against the seizure of cooking wine, port and cognac. HMRC refused to restore the goods to the taxpayer on the basis they were subject to excise duty. The goods themselves were purchased in France. Because of the confusion on the treatment of cooking liquors France believe they are not covered by the Excise Directive and can circulate freely without payment of Excise Duty and need for accompanying documents.

Paragraph 18 of the agreed statement of facts which are set out in Appendix 1, states there is no agreement within the Community as to how these products should be treated.

The first question asked whether such cooking liquors are subject to Excise duty under article 20 of Directive 92/83. Disagreeing with Repertoire Culinaire's proposal, the Commission's response to this question was that such cooking liquors are subject to excise duty on the grounds that they are within the definition of "ethyl alcohol" under article 20.

The questions then went on to ask whether the effect of restricting exemption to those who actually use the products in cooking and exemption thresholds breaches principles such as equal treatment and proportionality. The Commission's view on this point is that a Member State's obligation to give effect to the Directive's exemption is not fulfilled when it restricts this exemption further than is necessary to ensure its correct application or to prevent evasion, avoidance or abuse. The final question looks at the effect of the Member State where the products are manufactured, releasing the goods into free movement. The Commission's view on this is that Member States receiving these goods may subject them to excise duty where they believe that the exemption has not been applied correctly.

Round up of recently released First Tier Tribunal decisions

Three large batches of Tribunals were released last week. A brief summary of more interesting cases can be found below.

UKFTT 220 – Griffin & Griffin – Default surcharge – *Aardvark Excavations Ltd* and wide approach to surcharges applied – part taxpayer win

This is an appeal against a default surcharge for the late submission and payment of the VAT return ending 08/08. The Tribunal agreed there was no reasonable excuse but contrary to HMRC arguments the Tribunal applied the decision in *Aardvark Excavations Ltd* and applied the 'wider approach' to the construction of s59 VATA 94. In doing so the Tribunal took into account previous late VAT return submissions and payments. The Tribunal found that under a time to pay arrangement the taxpayer did have a reasonable excuse for prior periods. The later default surcharge in dispute was reduced accordingly. To read this case in full, click [here](#).

UKFTT 222 – Reed Employment plc – Whether HMRC are allowed to amend statement of case – yes - taxpayer loss

This is an appeal by the taxpayer against HMRC amending their statement of case to include a new argument that the taxpayer was acting as an agency. The Tribunal noted it was clear that from 1996 to 2009 both parties lost sight of the agency argument and instead focused on the three year cap and unjust enrichment. The taxpayer argued HMRC could have raised this issue in a 2004 statement of case and that HMRC's conduct gave the impression that the issue of 'agency' was not going to be raised and as a result there was no need to retain information which would have been available from 1995. The Tribunal dismissed the taxpayer's appeal noting if the appeal was allowed the taxpayer would win its case without ever proving its case. The Judge went on to 'express the hope' that the Tribunal will be ready to accept that the position relating to later years for which there is evidence will be applied to earlier years for which there is no evidence. To read this case in full, click [here](#).

UKFTT 227 – Parker Car Services – discount given to drivers was not consideration for a supply – taxpayer win with costs

This case concerned the treatment of what Parker Car Services (PCS) originally referred to as Account Work Commission, but which it later called Account Work Discount. These amounts related to services supplied to account customers where PCS acted as principal. PCS would invoice and collect money from the account customers. It would retain between 20 and 26 percent Account Work Discount and pass the remainder on to the drivers. HMRC believed this discount was consideration for services supplied by PCS to drivers and therefore VAT was due. The Tribunal concluded that there was no supply and the only supply by PCS was of XDA equipment for which a separate charge was made and VAT accounted for. The Tribunal cited *A2B Radio Cars* and *Camberwell Cars* as supporting the conclusion that a flat rate deduction is not consideration for a supply of services. The Judge distinguished *RJ and CA Blanks* and *Argyle Park Taxis* on the basis that no separate charges were made for equipment. To read the case in full, click [here](#).

UKFTT 238 – ERF Ltd – whether appeals out of time regarding civil evasion penalties – taxpayer loss in the main - taxpayer win on one point

This long case (54 pages) concerns a business where the financial controller had been dishonest and was using fraudulent VAT claims to keep the business solvent. Following the sale of ERF in March 2000, the incoming auditors discovered a discrepancy between the purchase ledger and the purchase ledger control account. By August 2001 it had become apparent that there was a deficiency of approximately £100 million on the balance sheet. The first VAT assessment was raised in March 2001 and more were made up until March 2004. The Tribunal looked at a number of points. Firstly the Tribunal dismissed the taxpayer's argument that the final 2004 assessment was not valid on the basis that the decisions made by HMRC not to assess until that time were not wholly unreasonable or perverse. ERF's appeals against a number of the assessments were also dismissed as being out of time. ERF's only success was regards the calculation of the civil penalty where the Tribunal held that an aggregate sum of £181,086 should be taken out of account for calculating the claim. This reduced the penalty by £36,217.20. As regards the mitigation of the penalty the Judge concluded they could make no further reduction beyond the 80 percent already granted by HMRC. To read this case in full, click [here](#).

UKFTT 244 – Gateshead Talmudical College – Whether there was decrease in taxable supplies and adjustment required under capital goods scheme - yes – taxpayer loss

Gateshead Talmudical College (The College) entered into an arrangement in 1996 whereby it granted the lease of a recently built extension to Starburst Properties Ltd (Starburst) which granted a lease back to The College. In 1998 Starburst was struck off the company register and was dissolved in 1999. The College stopped accounting for output VAT after August 1998. The taxpayer argued that a taxable lease continued to exist as a matter of law. HMRC argued that the making of taxable supplies reduced to nil and therefore an adjustment was required under the capital goods scheme. Whilst the Tribunal was not precisely clear as to which of HMRC's arguments it agreed with, the Judge dismissed the taxpayer's appeal. To read the case in full, click [here](#).

ECJ Diary

Other than the RBS Deutschland Hearing, referred to in this week's headlines, this week's cases are:

Thursday 17 June

Judgment – Commission v France (C-492/08)

This case involves the Commission's infringement proceedings against France in connection with its reduced rate of VAT on services provided by lawyers where they are paid in whole or part by State Aid. France applies a reduced VAT rate (5.5 percent) to services provided by lawyers within the framework of legal aid under which the services provided are totally or partially paid by the State. The Commission are of the opinion that Annex III does not include services provided by lawyers. To read the application in full click [here](#). The Opinion is not available in English.

Judgment - British American Tobacco (C-550/08)

This case concerns the first indent of the first subparagraph of Article 5(2) of Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products. It asks whether Article 15(4) of Directive 92/12/EEC should be interpreted as meaning that proof that the consignee has taken delivery of the goods may also be provided otherwise than by means of the accompanying document referred to in Article 18 of Directive 92/12/EEC. To read the reference in full click [here](#).

Judgment – Agra (C-75/09)

This case looks at the rights of the tax authorities in cases where criminal proceedings are taking place. The questions referred concern ability to revise time barred / lapsed assessments and whether time limits are interrupted or suspended pending the outcome of the proceedings.

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

Opinion – Schmelz (C-97/09)

This case concerns the exemptions or graduated relief for small businesses provided for small enterprises. Most commonly used by Member States is the exemption which allows businesses below a certain threshold not to have to charge and therefore register for VAT. The referring court asks the same questions on the relevant part of both the Sixth and the VAT Directive. The initial pair of questions asks whether the exclusion from this scheme of non-established persons (Article 283(1)(c) of the VAT Directive) is contrary to European principles such as non-discrimination and equal treatment. Further questions include whether the relevant references to annual turnover refers to turnover in a particular Member State or throughout the Community.

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

From the Tax Authorities

VAT Notes 2 2010

HMRC have released VAT Notes 2 2010. This is a summary of recent announcements and changes. It includes reminders of the changes to payments by cheque, online filing and time limits for assessments and claims. To access the notes, click [here](#).

HMRC Brief 29/10 - DIY Housebuilders and Converters VAT Refund Scheme

This Brief announces a change to the treatment of claims received by HMRC under the provisions of the above Scheme in respect of holiday homes. To read the brief in full, click [here](#).

Notice 700/43 Default Interest

This notice cancels and replaces the previous version of this Notice. No details are given of the changes or the reason for them. This notice is intended to explain how default interest works and when it is applied. It also gives advice about what to do if businesses believe too much interest has been charged. To access the leaflet, click [here](#).

HMRC Notice 703/2 - Sailaway boats supplied for export outside the EC

This notice explains the procedures for zero-rating the supply of a 'sailaway' boat. To read the notice, click [here](#).

HMRC Notices 162 (May 2010) and 163 (May 2010) - Cider and wine production

These revised notices explain the effects of the law and Regulations covering the production, storage and accounting for duty on cider, perry, wine and made-wine. To read notice 162 (cider and perry) click [here](#). To read notice 163 (wine) click [here](#).

HMRC revised Notices 196 (April 2010) and 197 (April 2010) – Warehousing excise goods

HMRC have released revised notices explaining the UK's requirements for the warehousing of excise goods held in duty suspension within the UK. To read notice 196 - Authorisation of warehousekeepers, click [here](#). To read notice 197 - Excise Goods: Receipt into and removal from an excise warehouse of excise goods, click [here](#).

Excise Movement & Control System (EMCS) Newsletter

HMRC have released their latest EMCS newsletter. To read the newsletter, click [here](#).

HMRC Tariff notices 15/10, 16/10, 17/10, 22/10 and 23/10

HMRC have issued five new Tariff notices.

To read notice 15/10 (UV light apparatus) click [here](#).

To read notice 16/10 (wooden bed frames) click [here](#).

To read notice 17/10 (Amendments of the Explanatory Notes of the Nomenclature annexed to the HS Convention and Classification opinions approved by the HS Committee) click [here](#)

To read notice 22/10 (commodity codes and TARIC breakdowns for infant drinks) click [here](#).

To read notice 23/10 (milk fat) click [here](#).

Recent JCCC (10) Papers

HMRC has released the following JCCC Customs Information Papers:

[38](#) - Importation of Civil Aircraft for maintenance/storage

[39](#) - Information on basmati rice imported under EC Regulation 972/2006

[40](#) - Tariff Preference: changes to arrangements regarding imports from Egypt Ch 1-38

[41](#) - Preferential rates of duty available for agricultural and fishery products originating in the EU and Egypt

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