

**VAT ON LEGAL SERVICES RELATING TO UK LAND**

**WHERE LITIGATION IN THE UK IS INVOLVED**

Supplies of legal services to overseas clients may not require VAT to be charged by the UK lawyer. However VAT must be charged by the lawyer on legal services relating to, or in connection with, UK land.

How does one determine whether the legal service relates to or is connected to UK land especially where litigation over the land may be involved?

**THE VAT PROVISIONS**

Directive

The governing provision is in the Council Directive 2006/112/EC Article 47 which states as follows:

“The place of supply of services connected with immovable property, including the services of experts and estate agents.....and services for the preparation and co-ordination of construction works, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located”.

UK Legislation

The UK legislation incorporating that Article is found in VATA 1994 Schedule 4A paragraph 1 which reads as follows:

“(1) A supply of services to which this paragraph applies is to be treated as made in the country in which the land in connection with which the supply is made is situated.

(2) This paragraph applies to—

.....services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to land.”

HMRC Guidance

The guidance of HMRC is in Notice 741.

In paragraph 6.5 HMRC state that the supply rule applies only to services which relate directly to a specific site of land or property.

The word “directly” does not appear in the legislation itself but the examples found therein indicate the need for the word as in one sense it may be said all supplies are connected in some way to land (see Heger Rudi, discussed below, para 33 Advocate General).

HMRC accept that it does not apply if the supply of services has only an indirect connection with land or if the land related service is only an incidental component of a more comprehensive supply of services.

### Text book

*De Voil Indirect Tax Service* at V3.188 takes the same line and states:

“The services supplied must relate directly to land. These rules do not apply where there is only an indirect connection or the land-related service is merely an incidental component of a more comprehensive service.”

### Case law

The general case law supports the above contentions. See:-

Brodrick Wright LON 86/461 (surveying report to Hong Kong company of damaged UK jetty was a service relating to UK land) ;

Mechanical Engineering Consultants MAN/93/1074 (a supply to a Swiss company concerning the commissioning of an industrial waste incinerator complex in Cheshire comprised services relating to UK land);

McLean & Gibson EDN/01/119 (supply of plant in Scotland which had to be demolished and shipped to South Africa comprised services relating to UK land);

Aspen Advisory Services LON/94/2773A (supply of management services to companies in the Channel Islands in respect of property located in the United Kingdom were supplies relating to UK land) and

International Trade & Exhibitions, Miller Freeman Worldwide Plc [1994] VATDR 435 (the supply of exhibition spaces were supplies relating to land).

Those cases have reaffirmed the basic principles about supplies having to be related *directly* to land but two cases have focussed more closely on the tests involved.

In Heger Rudi GmbH v Finanzamt Graz-Stadt [2008] STC 2679 fishing rights over particular areas of a river were sold by an Austrian company and it was held that the supplies were supplies of services connected with immovable property in Austria.

At para 25 the European Court stated that the rights related to a *particular stretch* of the river and not to rivers in general. The granting of the rights related to immovable property and *the focused area of immovable property was a central and essential element of the supply.*

Finally, the court emphasised that immovable property was situated in the place of the final consumption of the service i.e. the fishing took place in Austria. See paragraph 25 of the judgement.

In Kenneth Richard Daunter LON/2006/671 a Jersey company sued the personal representatives of an estate which was in the course of administration to establish its title to a specific UK property and it was held that the supplies of the litigation lawyer (who succeeded in

the courts) were viable at the standard rate as the property was a central and essential element of the making of the supplies: this was because the supplies were directed to bringing about the transfer of the property to the Jersey company (paragraph 27 of the decision).

To obtain the correct legal result the Jersey company had to obtain a court order following proceedings commenced in the county court against the estate. Prior to proceedings the company had demanded the flat from the personal representatives using the services of a non-litigation solicitor but that led nowhere. The court did feel that there seemed to be little defences available to the estate and felt that “the court must have had little or no difficulty in entering judgement for the claimant” (paragraph 12).

It may be argued this case was wrongly decided and the taxpayer appeared in person but it is a reasoned decision and was not appealed and HMRC accept it as good law.

### **THE ACID TEST**

From the above cases the VAT test is clear, i.e., **does the particular area of immovable property directly constitute a central and essential element of the supply of the professional services?** See Heger Rudi at paragraph 25.

In that case there was clearly a sufficient direct connection (paragraph 24) between the delineated immovable property ( specified area of the river) and the supply over the same (supply of fishing rights) and the supply had as its central and essential element the delineated property area.

The particular supply must be directly connected with the land area in question and it clearly was in the case of Heger Rudi as the rights were granted over the particular areas.

Relevant guidance can be found in the Daunter case on the question of directness where the position is not so clear-cut as in the Heger Rudi case.

*The question is whether it could be argued that the litigation element breaks the direct link between the immovable property and the supply in question.*

The tribunal in the Daunter case did emphasise the fact that the judgement did seem to be a mechanical operation; nevertheless the supplies made by the litigation solicitor did relate to the court proceedings.

The tribunal held that the court proceedings were needed for the perfection of the title to the property of the Jersey company. It was stated at paragraph 27:

“Given that the proceedings were for the perfection of the Appellant’s title, which is in our view what the proceedings amounted to, it is in our view impossible to say that they did not relate to land”.

Even if the court proceedings were not so cut and dry it is felt the tribunal would have come to the same decision. What the tribunal was looking for was the assertion to the entitlement to the property and the perfection of that title. If it took court proceedings to perfect the title that is still the assertion of entitlement and the perfection of entitlement to particular land areas and that provides the necessary direct nexus to the movable property and the professional supply.

Also, there can be no doubt that the movable property is situated in the place of final consumption of the service, i.e., the Jersey company will have enjoyed the property or its exploitation in the United Kingdom. See para. 25 (last sentence) of Heger Rudi.

**PARTICULAR SITUATIONS – APPLYING THE ABOVE TESTS WHERE THE CLIENT IS SAY A JERSEY COMPANY AND UK LITIGATION AND UK LEGAL FEES ARE INVOLVED**

***The client takes proceedings in the UK courts to rectify the terms of a lease in regard to easements, e.g., the client asserts the lease wrongly granted a right to the use of a rear garden at the property***

Applying the above tests this is a vatable supply by the lawyers as being a supply of services connected with immovable property in the United Kingdom.

The central and essential element is the UK property to which the lease relates.

The supply is in connection with the assertion to entitlement and the perfection of the rights of the taxpayer with regards to the ambit of the leasehold interest.

The immovable property is situated in the United Kingdom and that is the place of final consumption of the service.

The supply thus comes within the services relating to land provisions.

The supply satisfies the directness test because even if the supply related to court proceedings the test of directness would be satisfied *a fortiori* if one did not even need to get to court.

***The client claims for negligence against the client's previous solicitors in having wrongly drafted the terms of a claim for a Collective Enfranchisement of a residential property, which rendered the notice invalid***

This supply of legal services (suing the former solicitors for negligence) is not directly connected with the property (and is thus zero rated).

It is a claim for negligence relating to the property.

The central and essential element of the supply is **the act of negligence**. This action does not enhance the client's entitlement to the land. If anything the supply is indirectly connected to the land.

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