TC01455

Appeal number LON/2009/10512

VAT- New Means of transport – place of supply – new car purchased in Germany, transported to the UK and registered in the UK, then taken to Spain - was place of supply Germany, the UK or Spain? - X v Statteverket C84/09 applied

FIRST-TIER TRIBUNAL

TAX

IAN FELTHAM **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: CHARLES HELLIER
RICHARD LAW

Sitting in public at 45 Bedford Square, London WC1 on 22 February 2011 followed by written submissions

The Appellant was neither present nor represented

David Anderson, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Absence of the Appellant

1. We were satisfied that the Appellant had received proper notice of the hearing. When the appeal came to be heard, Mr Feltham was neither present nor represented.

2. Judge Berner had directed on 14 January 2011 that the Appellant's application that the case be reallocated to the default paper category be refused, and explained that the tribunal had no power to dispense with a hearing where one of the parties (HMRC) had not consented to the hatter proceeding without a hearing.

3. Mr Feltham had indicated in a letter to the tribunal of 21 January 2011 that he did not want to attend the hearing and was content for the appeal to be dealt with on the papers. He did not expressly say that he was content for the tribunal to hear oral argument from HMRC in his absence. In the circumstances, we concluded that it was just to hear the appeal in his absence: he had been offered the opportunity to attend and had not taken it. The tribunal's rules do not provide for one party to require a default paper determination.

Introduction

4. The appeal relates to VAT on the acquisition of a car, an Audi A8, by Mr Feltham. He purchased the car, new, in Germany and shortly after its purchase it was brought into the UK. At some time after that it appears that it was taken to Spain. HMRC say that the car was a New Means of Transport ("NMT") and that UK VAT was payable on its acquisition in the UK under section 10 VAT Act 1994. Mr Feltham's initial argument was that he paid German VAT on his purchase and that either no UK VAT was payable or any UK VAT should be reduced by the German VAT paid. He also said that he had received unhelpful advice from HMRC before his acquisition of the car which should be taken into account in determining his liability to tax.

5. During the course of the hearing it became apparent that there was another possible analysis, namely that the car should be treated as having been acquired in Spain and that consequently Spanish and not UK VAT would be payable. This tribunal has no jurisdiction to determine whether Spanish VAT would be payable, but if it concluded that the place of acquisition was Spain rather than the UK, UK VAT would not be payable.

6. Given this possibility, we decided to give Mr Feltham the opportunity to adduce evidence in relation to whether or not the acquisition was in Spain. We produced a "Direction and Decision in Default of Compliance" in which we set out our conclusions on the evidence and representations made to us up to that stage and directed the Appellant to write to the tribunal with any evidence he wished to put to the tribunal on this issue. We said that if Mr Feltham did not comply with the direction we would dismiss the appeal, having come to the view on the evidence that

far received that it was not shown that the car was, for the purposes of the transaction under appeal, to be transported to Spain.

7. Mr Feltham wrote to the tribunal on 23 May 2011 in compliance with the direction appending additional material. We refer to this letter as the Additional Letter. It was sent to HMRC for comment. In their written comments dated 4 July 2011, HMRC then submitted (a) that the tribunal did not have jurisdiction to consider the further information, and (b) that even if it did have such jurisdiction the new evidence did not weight the balance in favour of an acquisition in Spain.

8. This Decision contains the material from our initial Direction and Decision in Default of Compliance together with our consideration of the Additional Letter and HMRC's response. Our conclusion on the jurisdiction point raised by HMRC is set out towards the end of the decision.

The Evidence and our finding of Fact

9. We had before us a bundle of copy correspondence between Mr Feltham and HMRC, a witness statement from Phillip Heath Coleman who had translated a number of documents from German into English and whose translations were in our bundle, and a record of a telephone enquiry produced by HMRC. We also had Mr Feltham's Additional Letter. From that evidence we find the following facts. Where we quote extracts from documents in German we quote them in Mr Coleman's translation.

(i)The purchase of the car and its later transport.

10. On 8 December 2005 Autogas Geiger Gmbh of Kehl, Germany invoiced Mr Feltham for the sale of the car and on the same day issued a receipt for the purchase price less the amount of a deposit. We conclude that on 8 December 2005 Mr Feltham bought the car from Autogas.

11. The invoice indicated that the Official Code for the car was OG-709E. An EEC Certificate of Conformity dated either 15 or 16 December 2005 on Audi letterhead indicates that OG-709E was an export code allocated to the car. A German registration Certificate issued on 29 November 2005 (before the date of purchase) says "Export Abroad. Export Code OG-709E.".

12. On 14 December Mr Feltham signed an authorisation to Autogas to register the car with registration number OG-709E in his name and to accept the vehicle documents.

13. On 8 March 2006 Mr Feltham signed a form VAT 414 reporting to HMRC that the car, having first been registered on 15 December 2005 arrived in the UK on 6 March 2006 and that it had travelled 4010km.

14. On 12 April 2006 Mr Feltham signed a form VAT 415 notifying HMRC of the acquisition of the car and indicating that it had arrived in the UK on 13 March 2001 and had at the time of its arrival a recorded mileage of 4600kms.

15. These forms cast some doubt on Mr Feltham's attention to detail and accuracy, but are sufficient for us to conclude that the car arrived in the UK on or before 13 March 2006 and that, at the time of its arrival, and therefore also at the time of any acquisition in the UK, it had travelled less than 4600km under its own steam.

16. The form VAT 414 indicated that the UK registration number "1ANO" had been issued for the car. A certificate of approval by the UK Vehicle Certification Agency was issued on 13 March 2006.

17. We conclude that at or around the time of its arrival in the UK Mr Feltham procured its registration here under the "1ANO". Mr Feltham's first name is Ian. In the Additional Letter Mr Feltham explains that he had owned this registration number for 40 years.

18. The forms VAT 414 and 415 indicate that the car was a left hand drive model. The EEC certificate of conformity indicated that the car could be used on a continuous basis in Member States where traffic drives on the right and metric speedometers are used. We conclude that the car was a left hand drive model with a speedometer marked principally in km/hr which would be more suitable for use outside, rather than in, the UK (although not unsuitable for use in the UK).

19. On the VAT 415 Mr Feltham indicates that the car can be inspected at Largo Yojoa 12, Alborada, Spain. In a letter dated 31 May 2006 to HMRC from what seems to be the same address Mr Feltham says that the car was then in Spain where it was normally kept. In a letter of 17 July 2006 to HMRC Mr Feltham says that the car would not return to the UK until it required an MOT in three years' time.

20. We conclude that Mr Feltham brought the car into the UK (or arranged for it to be brought in), arranged for its registration under number "1ANO" and afterwards took it to Spain. It is possible on this evidence that he then intended to use it mainly in Spain. We address that issue later.

21. On 24 February 2006 Mr Feltham wrote to Autogas confirming the transfer of Eur 13,755.55 for the VAT on the car. He says " I purchased the vehicle on 15 December 2005 on German Export Plates." On 6 March 2006 Autogas provided a confirmation to Mr Feltham that he had "made a payment in the sum of Eur 13,755.55 as a deposit for VAT. As soon as the registration and customs documents have been submitted in London with the registration certificate this payment will be transferred back immediately."

22. From the German Registration Certificate's indication of export and the temporary Export Code OG-709E (given prior to the date of purchase), from Mr Feltham's record that the car was supplied on German Export Plates, and from the terms of Autogas' letter of 6 March 2006, we concluded that the taking of the car out of Germany to the UK for registration there was part of the arrangement between Autogas and Mr Feltham for the purchase of the car.

23. In his Additional Letter Mr Feltham says that it was always made clear to Autogas that the car would be used mainly in Spain and that the car had more highly

rated air conditioning to cope with higher temperatures; the only reference we could find to this in the documents before us was a reference to "4-Zone air conditioning" among some 36 other features of the car . He says that there was no prior agreement to remove the vehicle from Germany and indeed that there were discussions to extend the registration in Germany. We find that the German Export Plates, and the VAT arrangements show that there was an arrangement for the car to be removed from Germany; indeed the discussions in relation to extending German registration suggest that at the time of purchase it was not intended that the car should rest in Germany. There was no reference to Spain in the Autogas papers and indeed the Auto gas letters gave Mr Feltham's address as 38 Ibis Lane, and not a Spanish address.

24. In his Additional Letter Mr Feltham says that the car was modified to make it UK compliant. Following the modifications the UK Vehicle Certification Agency certified it as compliant on 14 March 2006.

25. The details given of the car indicate an engine capacity of some 4000cc.

(ii)Dealings with the car after purchase

26. In his Additional Letter Mr Feltham explains that:

(1) The car was collected from Autogas on 13 December 2005 and immediately taken to a garage in France where it was stored until 16 December;

(2) On 16 December it was taken to Austria where it was stored until 6 January 2006;

(3) It was then driven to Vienna;

(4) On 9 January it was driven to Cortina D'Amprezzo in Italy;

(5) On 13 January it was then taken to Austria where it was stored until 6 March 2006.

(6) On that date it was driven to Strasbourg;

(7) And thence on 7 March 2006 driven to the UK where modifications were carried out for VCA certification;

(8) On 13 March 2006 it was transported to Spain;

(9) From then to March 2009 it did not enter the UK;

(10) On 27 June 2006 it was insured in Spain with Spanish insurers who have insured it ever since;

(11) In 2009, 2010, and 2011 it came to the UK for a few days to be MOTed.

27. We accept this evidence as broadly accurate although the date at 24. (7) above is slightly different from that on the VAT414 and 415.

28. In his Letter Mr Feltham says that the only reason the car came to the UK was to arrange its registration under IANO.

29. Mr Feltham says that the car travels through Europe never spending more than six months in any country in any 12 month period. HMRC say that it appears that Mr Feltham has so arranged its movements in order to avoid tax, in reliance on Art3 of Directive 83/182 on temporary import:

> "Where a private vehicle…is imported temporarily, the item imported shall be exempt from…taxes for a period…of not more than six months in any 12 month period provided that…the individual importing such goods…has his normal residence in a Member State other than the Member State of temporary importation."

(iii) Mr Feltham's addresses

30. On the form VAT 414 and 415 Mr Feltham gives his address as 38 Ibis Lane, London W4 3UP. Autogas address their invoice and later receipt to him at this address. He writes from this address to Autogas on 24 February 2006. In his reply to HMRC's statement of case dated 13 August 2010, Mr Feltham states that at the time he bought the car he had 3 vehicles registered at 38 Ibis Lane.

31. Mr Feltham says in the Additional Letter that there is no requirement for a keeper to live at the registered address: the form simply states: "Give an address in Great Britain" But, whilst the VAT 414 asks for the "UK address of the registered keeper", under the heading Acquirer's particulars it asks for the "Acquirer's address" without refernce to the UK. He gives the address of the acquirer as 38 Ibis Lane.

32. But in his letter of 25 June 2007 to HMRC Mr Feltham says "I would like to point out that I do not and have not resided at 38 Ibis Lane for the past 7 years.".

33. HMRC say that 38 Ibis Lane was the registered office of Christopher Properties Limited, and note that the Additional Letter appended an invoice addressed to Christopher Properties for the transport of the car to Spain.

34. In a letter dated 28 November 2006 Mr Feltham says that a telephone call with HMRC was given a reference: "my reference was my postcode W3 9BD". A record produced by HMRC of a telephone conversation between Mr Theltham (sic) and HMRC's enquiry unit on 22 February 2006 gives Mr Theltham's address as 14 Park Parade, London W3 9BD. In his Additional Letter Mr Feltham says that this was his then office address.

35. Mr Feltham says in his letter of 17 July 2006 that he was in Austria at the time he purchased the car in Germany.

36. Later correspondence between HMRC and Mr Feltham is from, and addressed to, his address in Spain.

37. We conclude that Mr Feltham travelled, and spent time at his address in Spain, but that he also spent time in the UK where he had at least one place to stop (and where at least one of his cars might rest). We note that, at the time of his telephone

call to HMRC, he also had an office in the UK, which would imply that he also spent time there.

38. *(iv) Mr Felham's country of residence*

39. Mr Feltham says in various representations that he was not UK resident. HMRC note that in March 2006 he appears to have had a UK mobile phone number.

40. In his Additional Letter Mr Feltham says that HMRC have regarded him as non-UK resident. He produces a letter from his accountants to that effect. That may well have been HMRC's opinion on that evidence available to them. We take it into account, but it binds us no more than HMRC's decision that the acquisition of the car was in the UK.

41. In his Additional Letter Mr Feltham says that he had a right hand drive Audi registered in the UK. That points to some active presence on his part in the UK.

42. The evidence before us is insufficient to conclude as to whether Mr Feltham was resident or not in the UK or elsewhere in 2005 and 2006. We find him to have had material links with the UK, but do not have sufficient evidence to be able to express a view on whether or not he was UK resident.

ivi) Mr Feltham's calls to HMRC

43. Mr Feltham's correspondence with HMRC and the tribunal gives various accounts of the telephone advice he says he received from HMRC:

(1) 8 May 2006: "Prior to bringing the vehicle into the UK I telephoned [HMRC], twice, to enquire as to weather (sic) I would have to pay the difference between 16% and 17.5% VAT, I was informed that I would not have to pay the difference..."

(2) 27 May 2007: "…I have a record of the telephone conversation with [HMRC] where in they confirm that no further VAT would be payable. I have supplied the call reference…I…suggest you obtain a copy of my call…"

(3) 17 July 2006: "Prior to bringing the vehicle into the UK I telephoned [HMRC] to enquire if I would be required to pay any additional VAT, and was advised THREE times I would not."

(4) 28 November 2006: "…prior to bringing the goods into the UK I telephoned on three separate occasions from Austria. The local VAT office to confirm that I would not have to pay any additional VAT, this was confirmed, three times…my reference was my postcode, W3 9BD"

(5) 20 April 2007: "I wrote giving the reference number of the call I made from Austria in January 2006…when it was confimmened (sic) that I would not have to pay any additional VAT on bringing the vehicle into the UK. If I had not received such confirmation I would not have brought the vehicle in. … the reference was QLW 40862."

(6) 13 August 2010 (in his Reply): "…the Appellant … was advised very clearly that no further VAT would be payable… The Appellant requests…the Commissioners to produce the transcript of the telephone calls made by the Appellant to his local VAT office during February 2006…which are Reference Number QLW40862. West London VAT office…".

44. HMRC produced their record of the telephone conversation referred to at para 32 above. This was dated February 2006 and showed Mr Feltham (Theltham)'s address as W3 9BD. The call is recorded thus:

"Q. If I bring a car over from Germany that no VAT has been paid on do I have to pay the VAT at the purchase amount or on the value at time of import?

A. At time of purchase.

Q. If I pay the VAT in Germany would I also have to pay VAT in the UK as car is second hand (older than 6 months with more than 6000km on the clock)?

A. No".

45. Mr Feltham's accounts of his calls are inconsistent and his account of what was said to him imprecise. It is not clear what details were provided to HMRC or which questions he asked. Sometimes he refers to one call, sometimes two, sometimes three. The references he gives differ. The dates differ. He does not make clear whether he asked about having to pay the difference between UK VAT and German VAT (additional VAT), or simply whether he asked about paying UK VAT, or whether he asked about a new or used car.

46. From the evidence before us, we cannot find that Mr Feltham was given any clear assurance referable to the precise facts of his case that he would not have to pay UK VAT on bringing his car into the UK.

47. *(vii) Spanish VAT*

48. In his Additional Letter Mr Feltham says that arrangements are in hand to register and pay taxes in Spain. He says that he had originally not considered or been asked about Spanish VAT or registration although enquiries were made in 2010 and after the tribunal raised the issue in its Direction.

49. He provides evidence that Candela Asesores have been instructed to advise on transferring the car into Spanish registration and the payment of Spanish VAT but that before proceeding with this course of action Mr Feltham was awaiting the tribunal decision. While this is evidence of his current intention, it is not indicative of his intention at the time of the transaction that is the subject of this appeal.

The relevant Legislation

50. The Sixth Directive was in force at the time of the transactions.

51. Article 28a provided that

"1. The following shall also be subject to value added tax:

…(b) intra-community acquisitions of new means of transport effected for consideration within the country by…[a]non-taxable person

"2. For the purposes of this Title:

(a) the following shall be considered as "means of transport": …motorised land vehicles the capacity of which exceeds 48 cubic centimetres…intended for the transport of persons or goods…

(b) the means of transport referred to in (a) shall not be considered to be "new" where both of the following conditions are simultaneously fulfilled;

- they were supplied more than three months after the date of first entry into service. However, this period shall be increased to six months for the motorised vehicles defined in (a),

- they have travelled more than 6,000 kilometres in the case of land vehicles…

"3. "Intra-Community acquisition of goods" shall mean acquisition of the right to dispose as owner of moveable tangible property dispatched or transported to the person acquiring the goods by or on behalf of the vendor or the person acquiring the goods to a Member State other than that from which the goods are dispatched or transported."

52. Article 28b deals with the place of transactions. It provides:

"A …1. The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends."

53. Article 28c provides that member states shall exempt the supply of new means of transport dispatched or transported to the purchaser out of the territory of the state of supply to another State.

54. Article 21 provides that the Member State in which the transport ends shall exercise its power of taxation irrespective of the VAT treatment applied in the member state of dispatch.

55. In the UK these provisions are given voice in sections 10 and 11 VAT Act 1994 (the Act which was applicable at the relevant time).

56. Section 10 provides that:

(1) "VAT shall be charged on any acquisition from another member state of any goods where-

(a) …

(b) …

(c) the person who makes the acquisition is a taxable person or the goods… consist in a new means of transport.

(2) An acquisition of goods from another member state is a taxable acquisition if-

(a) …the goods consist in a new means of transport."

57. Section 11 provides that:

(1) "Subject to [provisions irrelevant to this dispute], references in this Act to the acquisition of goods from another member state shall be construed as references to any acquisition of goods in pursuance of a transaction in relation to which the following conditions are satisfied, that is to say-

(a) the transaction is a supply of goods…and

(b) the transaction involves the removal of the goods from another member state…"

58. Section 95 defines "new means of transport":

(1) "In this Act "means of transport" in the expression "new means of transport" means, subject to subsection (2) below, any of the following, that is to say-

(a) ..

(b) ..

(c) any motorized land vehicle which-

(i) has an engine with a displacement or cylinder capacity exceeding 48 [ccs]…

(2) [it must be intended for the transport of persons]

(3) For the purposes of this Act a means of transport shall be treated as new, in relation to any supply or any acquisition from another member state, at any time unless at that time-

(a) The period that has elapsed since its first entry into service is-

…in the case of a land vehicle, a period of more than 6 months; and

(b) it has, since its first entry into service, travelled under its own power-

(iii) in the case of a land vehicle, for more than 6000 kilometres"

59. It is clear that the provisions in the domestic legislation in relation to the meaning of New Means of Transport ("NMT") replicate those in the directive so far as concerns this case. In relation to the incidence of the charge to tax on acquisition both the directive and the domestic legislation provide for a charge in the UK where there is an acquisition of a NMT in the UK. Section 11(1) however contains provisions which are not expressed in the directive. It is established law that, if those provisions are apparently consistent with the directive and can be read conformably with the

directive then we should do so. If they cannot be read consistently with the directive and provide for a less arduous regime for the taxpayer then he may rely on them; if they are more arduous than the directive, then he may rely upon the direct effect of the directive. In this case, however, for the reasons which appear later in this decision, there appears to us to be no conflict between the relevant provisions.

The Parties' arguments

60. In his original notice of appeal Mr Feltham: (i) refers to the advice he says he received from HMRC; (2) says he would not have brought the car into the UK when he did if he had been advised it had to be more than 6 months old to avoid VAT (something which, as we explain below is not the case), (3) says that the UK VAT should be reduced by the currency divergence, (4) says that the UK VAT should be reduced because he was wrongly advised by HMRC, (5) asserts his non UK residence.

61. In his reply to HMRC's statement of case Mr Feltham relies on the provisions of section 47 VAT Act 1983. The time and mileage limits in that section are less than those of 6 months and 6000km in VAT Act 1994.

62. In his Additional Letter Mr Feltham says that he now contends that VAT was and is payable in Spain. He says the following factors point away from UK acquisition:

(1) That he had a right hand drive Audi for use in the UK; why purchase a left hand drive car for use in the UK?

(2) That the car was brought to the UK only for the purposes of attaching the registration IANO, not for consumption here.

(3) That it was clear to Autogas that the car would be used in Spain.

63. Mr Anderson in his original clear submissions argued that:

(1) the car was a NMT;

(2) the acquisition fell within Article 28a, and took place in the UK because that was the place where the transaction ended;

(3) the acquisition fell within section 11 VAT Act 1994; and

(4) even if the tribunal had the jurisdiction to give effect to a legitimate expectation arising because of advice given by HMRC, Mr Feltham did not have such an expectation.

64. During the course of the hearing we asked Mr Anderson whether there was any case law on the acquisition provisions of the directive, and in particular whether there was anything which addressed the question of temporary importation. Immediatley after the hearing he produced further written submissions on this issue for which we are very grateful. Their import is addressed below.

65. In his later submissions on the Additional Letter Mr Anderson argues that

(1) The arrangement with Autogas points towards UK acquisition,

(2) Mr Feltham has material connections with the UK ,

(3) Registration in Spain five years after purchase cannot support the contention that the original transaction involved transport to Spain,

(4) The transport to the UK for registration under IANO, its modification for UK certification, its UK MOTs, and its temporary presence of no more than 6 months in any European country all point to a transaction under which the car was to be brought into the UK.

Discussion

(i) Misleading advice/ legitimate expectation.

66. We have concluded that it was not shown that Mr Feltham had been given clear advice relating to his particular circumstances. We cannot therefore hold that he had any legitimate expectation that the VAT regime in the UK would be applied differently from the way which follows from the statutory provisions. No adjustment should be made to the VAT due by reason of this ground of appeal.

(ii) New Means of Transport

67. It is clear to us that when it was purchased the car was a NMT for the purposes both of the Directive and the domestic legislation. This test is in our view to be performed at the time of purchase and not the time of import into the UK. But even if performed at the time of import the car was a NMT. That is because:

(1) Its engine capacity exceeded 48cc;

(2) It was, in the ordinary use of that term, still "new";

(3) It was not excluded from being a NMT because both when purchased and when brought into the UK it was less than 6 months old, and had travelled less than 6000km.

68. We reject Mr Feltham's contention that the provisions of VAT Act 1983 should apply. The relevant provisions are those of VAT Act 1994, which superseded the VAT Act 1983.

(iii) Place of Acquisition

69. Article 28 makes clear that VAT is payable in the county in which an acquisition takes place rather than the country of sale. Article 28b says that the country of acquisition of transported goods is the place where the transport ends. That raises the issue of how connected the sale and the transport must be, and also raises the questions in the context of this appeal as to whether the transport ended in Germany, somewhere between Germany and the UK, in the UK, in Spain or on the way from the UK to Spain.

70. In the written submissions Mr Anderson provided immediately after the hearing he referred us to *X v Statteverket* C-84/09, a decision of the ECJ in relation to the circumstances in which a boat bought as a New Means of Transport in the UK and to be transported back to Sweden was to be treated as supplied in Sweden or in the UK. In those submissions Mr Anderson fairly and properly pointed out the features of that case which favoured Mr Feltham and made clear that HMRC accepted that if, on a proper assessment of the evidence, the tribunal, having applied the guidance given in this case, came to the conclusion that the supply of the car took place in Spain, VAT would not be due on the UK.

71. In *Statteverket* the ECJ were asked a fairly narrow question as to whether transport out of the state of purchase could be required to begin within a set period after the purchase before the transaction could be said to take place in another State. In answering that question the Court gave more general, and (unusually) helpful guidance.

72. The Court held that the imposition of a set period would permit the customer to choose where to pay VAT and would be contrary of the scheme of VAT "in that it would deprive those Member States where the actual consumption takes place of the tax revenue which is rightfully theirs ([31]). The essence of the test is that the VAT is due where the consumption of the supply took place. That, in our view, does not necessarily mean the place where the asset was eventually used, but must refer to the place of use contemplated by the transaction, and the question to be addressed is what actually was the intended transaction.

73. The ECJ, at [33], said that in order for the right classification of the place of supply to be made "… a temporal and material link must be established between the supply of the goods and the transport of goods, as well as continuity in the course of the transaction".

74. The Court went on to consider the conditions relevant to the test.

"[44] …it is necessary to conduct an overall assessment of all the relevant objective evidence in order to determine whether the goods purchased had actually left the territory of the Member State of supply, and, if so, in which member State the final consumption took place.

"[45] In that regard,…significance may be attached to factors such as the amount of time spent on transporting the goods in question, the place of registration and usual use of the goods, the place of residence of the purchaser, and the presence or absence of links between the purchaser and the Member State of supply or another State.

"[46] In the specific case of the acquisition of a sailing boat,…relevance may also be attached to the flag of the Member State and the place where the sailing boat will usually be moored or anchored and where it will be stored in winter.

"[47] …account must also be taken, so far as possible, of the purchaser's intentions at the time of acquisition provided they are supported by objective evidence…

"[48]..it cannot be required…that transport of a means of transport be carried out immediately after its supply, that it be uninterrupted and the goods…not be used in any manner…during said transport.

"[50]The essential issue is, in fact, to determine the Member State in which the final, permanent use of the means of transport will take place…"

75. The Court also noted at [53] that the assessment of whether or not a vehicle was a NMT must be carried out at the time of purchase not at the time of arrival. (See also para 65 above).

76. It seems to us that the approach to the question of where the supply ends taken by the ECJ is not inconsistent with the approach inherent in section 11 VATA 1994. That section directs attention to the transaction in pursuance of which the goods were acquired. It seems to us perfectly permissible to read the word "transaction" as encompassing those matters to which the ECJ refers and which we set out in paras 49 to 51 above. Indeed the idea of a transaction in a broad sense seems to us to be a helpful way of viewing the wider picture. It would not however be permissible to read transaction as constrained to the contract of purchase and sale of the goods, but on the other hand it would be an unusual transaction in which it was arranged that the goods would reach their intended destination many years after purchase. Para [44] of *Statteverket* requires us to make an overall assessment of all the objective evidence to determine whether the goods left Germany and in which state final consumption took place. It was clear that the goods left Germany and that their export from Germany was part of the transaction of acquisition. We now consider the objective evidence for the place of final consumption under the transaction.

77. The following factors point to acquisition in Spain:

(1) The left hand drive and km/hr speedometer of the car;

(2) Mr Feltham's accommodation in Spain;

(3) Mr Feltham's ownership of a right hand drive car registered in the UK;

(4) The transport of the car to Spain following registration in the UK.

78. The following features point towards consumption being in the UK:

(1) The modifications for UK registration;

(2) The Autogas documents refer only to transport to the UK, and only to the Ibis Lane address in the UK;

(3) The car was given a UK registration and the keeper's address was initially said to be 38 Ibis Lane;

Mr Feltham gave an address of 38 Ibis Lane on both forms VAT 414 and VAT 415. It seems likely that he has connections with that address.;

(4) While we have made no finding that Mr Feltham was or was not resident in the UK, we have found that he had some sort of place to rest (at least his car) here and has material links with the UK.

(5) Mr Feltham did not consider paying Spanish VAT at the time of purchase. (We find that his later arrangements for payment of registration in Spain and for paying Spanish VAT do not bear on the transaction that is the subject of this appeal).

(6) Mr Feltham had not sought to register the car in Spain (at least until recently).

79. What we need to consider is the place of consumption of the car under the acquisition transaction. That transaction as contemplated by the parties in our view ended when the car came to the UK. The car was "consumed" in the UK by being brought here and registered here. The object of the purchase transaction was to get the car to the UK for it to be registered under IANO. That was a use and a consumption of the car. The car was later used in Spain, but it was not proven to us that its use there was permanent. Indeed, it seems that it was not intended that it be there for more than six months in any year. While there is evidence that the car was to be used in Spain it was not evidence of permanent use there.

80. Based upon the evidence put before us, we find that the car was acquired in the UK.

The Jurisdiction of the tribunal

81. Mr Anderson submits that in paragraph 56 of the Direction and Decision in Default of Compliance the tribunal reached a determination on the dispute and that thereby the appeal was dismissed. In that paragraph we said:

> "on the evidence before us we could not find it proven that the car was under the overall transaction to be transported to Spain. Instead we find that the evidence indicated transport to the UK for registration here."

82. But in the following paragraph we said that since the Appellant had not had the opportunity to adduce evidence on the question of whether the transaction involved the transport of the car to Spain he should be allowed the opportunity to do so.

83. Mr Anderson says that the implication is that the Appellant be permitted to amend his grounds of appeal to raise a new argument after the point when the tribunal has issued its judgement.

84. Rule 2 of the tribunal's rules requires the tribunal to deal with cases justly and fairly. That, by Rule 2(2)(b), includes avoiding unnecessary formality and seeking flexibility in the proceedings. The Rules divide cases into Default Paper, Basic, Standard, and Complex cases. Whilst Rule 27 prescribes an exchange of lists of documents in Standard and Complex cases, there is no such requirement in Basic cases: they are Turn Up and Talk cases. None of the rules provide for the exchange of witness statements: although in Complex cases the tribunal will generally give directions in that respect. Flexibility is needed to achieve fairness and justice particularly in Basic and Standard cases: if a party turns up with arguments and

evidence for which the other party is unprepared the tribunal must have power to adjourn the hearing to give time for that party to get his case in order. The Rules provide for the submission of Grounds of Appeal but do not expressly limit the arguments to those specifically pleaded. In a Complex case it may be just for the tribunal to do so do, but in a Standard or Basic case it would be exceptional for a tribunal to take that course. Very often, particularly with litigants in person, the law is not understood and the arguments which need to be pursued are either not made at all or are confused. Flexibility and justice requires the tribunal to deal with arguments omitted from the Grounds of Appeal and those patent or latent in the appeal.

85. The tribunal is not simply a body to resolve private disputes between two parties. It has a duty properly to apply the law to the relevant facts and ensure that the taxpayer is taxed in accordance with the law. That means raising issues which may not have been raised by the parties and adapting its procedures accordingly.

86. In this case the argument that the acquisition of the goods took place in Spain was raised expressly by neither party. It became apparent during the hearing that that might be the case. Mr Feltham had not addressed that possibility. If he had been present at the hearing we may have formally adjourned the hearing for him to produce relevant evidence. The Direction and Decision in Default was an equivalent measure.

87. It is regrettable if, by including in that document our summary of the hearing and the later submissions of Mr Anderson, we gave any impression that we had finally decided the matter. The object was to make clear to the parties that on the evidence up to a particular point that would be our conclusion, and thus that in the absence of any further evidence the appeal would be dismissed. But also that the matter was not closed. In this respect it was intended to be no more than an indication to the parties during the course of a hearing that for example on the evidence so far the tribunal did not find a particular point proven or it leaned to a particular view of the law.

Conclusion

88. We dismiss the appeal.

Rights of Appeal

89. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

CHARLES HELLIER

TRIBUNAL JUDGE
RELEASE DATE: 20 September 2011