35TACD2021

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to the imposition of a Value Added Tax (hereafter VAT) charge in the amount of €49,776 on the purchase of a newly manufactured yacht, 11.97 metres long, by the Appellant ('Company') from a UK supplier in 2012.

2. At the time of purchase, the yacht was moored outside the State and it was not brought to Ireland until 2014. The invoice received from the UK supplier in 2012, did not include any VAT charge and the Appellant's Irish VAT number was noted on the invoice. However, the invoice supplied did not include the required notation/indication that the invoice relates to an Intra-Community supply of goods pursuant to S.24 (1)(b) VATCA10 and Paragraph 20 of the VAT Regulations 2010.

3. The Appellant originally treated the purchase of the boat as an Intra-Community acquisition and self-accounted for the VAT of €49,776 on a reverse charge basis in the Company's VAT returns for the year ended 30 June 2012. The Appellant simultaneously claimed a full VAT deduction on the basis that the yacht would be used for the purpose of the company's trade.

4. The Company subsequently sold the yacht to a Company Director, DIRECTOR A, on 28 February 2014 for €150,000 (inclusive of €28,049 VAT). The sales VAT was initially included in the Company VAT returns for year ended 30 June 2014 and paid by the Company. On 17 May 2017 the Company filed an amended VAT return for this period, removing this sales VAT. This gave rise to an overpayment of €28,049 which was refunded to the Company by the Respondent.

5. DIRECTOR A registered the yacht in her name with the Registrar of Ships in IRISH PORT in July 2016. The yacht had not been registered in any other jurisdiction prior to this. Subsequent to this registration the Respondent raised a number of queries regarding the history of the yacht.

6. On the 31 October 2016 the Company Director, DIRECTOR B, made an Unprompted Disclosure for an additional VAT liability in the Company of €49,776 for the year ended the 30 June 2014, including an interest calculation of €4,971 for the period from the 19 July 2014 to 31 October 2016.

7. After a period of correspondence between the parties regarding the correct treatment for VAT purposes, the Respondent denied the VAT deduction in the annual VAT return for the year ended 30 June 2012 on the basis that the yacht had been used by the Company's directors for personal hobby use and therefore a deemed self-supply for non-business purposes had been made, pursuant to S. 19(1)(g) VATCA10. The Respondent calculated the interest from the due date of 19 July 2012 to the date of issue of the letter.

8. The Respondent issued a VAT Notice of assessment on 22 February 2017 for the year ended 30 June 2012, showing a balance due of €49,776.

9. The Appellant duly appealed this assessment on 20 March 2017, on the basis that there view now was that the original acquisition by the Appellant does not, in fact, come under S.24 (1) (b) VATCA10 as an Intra-Community acquisition, and therefore there was no requirement for the Appellant to self-account for the VAT on the purchase.

10. This appeal is, by agreement between the parties, determined without an oral hearing, in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background leading to the VAT Assessment

11. The Appellant Company operated a number of REDACTED in the REDACTED area. DIRECTOR A and DIRECTOR B are directors and 100% shareholders of the Appellant Company. At a directors meeting of the Company, held on 13 June 2012, approval was given to purchase the yacht for 'promotional purposes'. The Company accounts for the year ended 30 June 2012 recorded the yacht as a tangible asset at a cost of €216,420. At the time of purchase, the yacht was in Spanish territorial waters, moored outside the State off the coast of Spain.

12. The yacht was built in France and completed in March 2012. The UK Supplier, SUPPLIER (UK), acquired title to the yacht in June 2012 whilst it was in Spanish territorial waters. The Supplier sold the yacht to the Appellant, by invoice, on 15 June 2012 for STG£175,610. This converted to €203,769.

13. The Company's Form P35's for 2012, 2013 & 2014, declared a full Benefit-in-Kind liability on the directors' use of the yacht for these years. The Benefit-in-Kind amounts returned were as follows:

    2012 – Value of Yacht €216,420 @ 5% x 26/52 = €5,410
    2013 – Value of Yacht €216,420 @ 5% x 52/52 = €10,821
    2014 – Value of Yacht €216,420 @ 5% x 16/52 = €3,329

14. On the 31 October 2016 the Company Director, DIRECTOR B, made an Unprompted Disclosure (copy shown in **Appendix 1**) for an additional VAT liability in the Company of €49,776 for the year ended the 30 June 2014, including an interest calculation of €4,971 for the period from the 19 July 2014 to 31 October 2016.

15. On 1 November 2016, Revenue wrote to the Company, stating that Revenue had concluded that VAT was due when the Company acquired ownership of the yacht in 2012 and the liability to VAT €49,776 should have been accounted for in the annual VAT3 return for the year ended the 30 June 2012. The interest was calculated from the due date of 19 July 2012 to the date of issue of the letter. This interest amounted to €15,784. Revenue also notified the Company of a proposed penalty of 5%, amounting to €2,488. The total liability stated to be due was €68,048.

16. The Respondent issued a VAT Notice of assessment on 22 February 2017 showing a balance of VAT due of €49,776.

17. The Appellant duly appealed this assessment on 20 March 2017. In submissions to Revenue and to the Tax Appeals Commission, the Appellant sought to reverse its

view expressed in the Unprompted Disclosure of 31 October 2016 and now asserts that no VAT is payable on the acquisition of the boat in 2012.

Background to the Boat's movements (supply and moorings)

18. The yacht was built, on the order of SUPPLIER (IRELAND), in France by BOAT BUILDER per the certificate dated 21 March 2012. BOAT BUILDER sold the yacht to SUPPLIER (IRELAND), invoice date 4 April 2012, whilst the yacht was moored off the coast of France (REDACTED).

19. SUPPLIER (IRELAND), then transferred the title to the yacht to SUPPLIER (UK), on 15 June 2012, when the yacht was in Spanish waters. SUPPLIER (UK) then sold the yacht to the Appellant on 15 June 2012. The final bank transfer payment was made in June 2012. At the time of purchase, the yacht was in Spanish territorial waters moored off the coast of REDACTED, Spain.

20. The Supplier has confirmed that the yacht "was not on the island of Ireland at any stage during or prior to its delivery".

21. Initially when the boat was acquired in 2012 it was in Spanish territorial waters. It was planned to sail the yacht to the Caribbean. However this plan was abandoned, and the yacht was sailed to Portugal in August 2012. Later, the yacht departed Portuguese territorial waters and returned to France in October 2013. The yacht remained in French territorial waters until it was sold in February 2014 to one of the Company's directors, DIRECTOR A, and brought to Ireland.

22. The invoice received from the UK supplier in 2012, did not include any VAT charge and the Appellant's Irish VAT number was noted on the Invoice.

Legislation

Section 2 VATCA10 - Interpretation

> *"new means of transport" means "motorised land vehicles with an engine cylinder capacity exceeding 48 cubic centimetres or a power exceeding 7.2 kilowatts, vessels exceeding 7.5 metres in length and aircraft with a take-off weight exceeding 1,500 kilogrammes—*
>
> *(a) which are intended for the transport of persons or goods, and*

(b) (i)which in the case of vessels and aircraft were supplied 3 months or less after the date of first entry into service and in the case of land vehicles were supplied 6 months or less after the date of first entry into service, or

……

"vessel*", in relation to transport, means a waterborne craft of any type, whether self-propelled or not, and includes a hovercraft;*

Section 3 VATCA 2010 – Charge of value-added tax

Section 3 levies a charge to VAT on intra-Community acquisitions

"Except as expressly otherwise provided by this act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions: ….

(e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State."

Section 24 VATCA 2010 – Intra-Community acquisitions of goods

Section 24(1)(b) VATCA 2010 defines "intra-Community acquisition" as including:

"b) new means of transport supplied by a person in a Member State to a person in another Member State and which has been dispatched or transported from the territory of a Member State to the territory of another Member State as a result of being so supplied."

Section 32 VATCA 2010 – Intra-Community acquisition of goods

Section 32 VATCA 2010 states:

(1) "The place where an intra-Community acquisition of goods occurs shall be deemed to be the place where the goods are when the dispatch or transportation ends."
(2) Without prejudice to subsection (1) but subject to subsection (3), when the person acquiring the goods quotes his or her value-added tax registration number for the purpose of the acquisition, the place where an intra-Community acquisition of goods occurs shall be deemed to be

within the territory of the Member State which issued that registration number, unless the person acquiring the goods can establish that such acquisition has been subject to value-added tax referred to in the VAT Directive in accordance with subsection (1).

Section 59 (2) VATCA 2010 – Deductions for tax borne or paid

(2) Subject to subsection (3), in computing the amount of tax payable by an accountable person in respect of a taxable period, that person may, in so far as the goods and services are used by him or her for the purposes of his or her taxable supplies or of any of the qualifying activities, deduct—

(c) subject to such conditions (if any) as may be specified in regulations, the tax chargeable during the period, being tax for which he or she is liable in respect of intra-Community acquisitions of goods,

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Section 29 (1) VATCA 2010 – Place of supply of goods – General rules

(1) For the purposes of this Act, the place where goods are supplied shall be deemed to be—

(a) in the case of goods dispatched or transported and to which section 30 does not apply, subject to subsection (2), the place where the dispatch or transportation to the person to whom the goods are supplied begins,

……..

(c) in the case of goods not dispatched or transported, the place where the goods are located at the time of supply,

……

Section 19 (1) VATCA 2010 – Supply of goods – Meaning of supply of goods

(1) In this Act "supply", in relation to goods, means—

……..

(g) subject to subsection (1A), the appropriation of the goods by an accountable person for any purpose other than the purpose of his or her business or the disposal of the goods free of charge by an accountable person where—

(i) tax chargeable in relation to those goods—

(I) upon their purchase, intra-Community acquisition or importation by the accountable person, or

(II) upon their development, construction, assembly, manufacture, production, extraction or application under paragraph (f),

as the case may be, was wholly or partly deductible under Chapter 1 of Part 8, or

……..

Appellant's Submissions

23. The Appellant set out their analysis of the relevant VAT legislation and why they believe that no VAT liability arises for the Appellant in the year ended 30 June 2012, as follows:

"Analysis of Place of Supply of goods and supporting legislation for the accounting of VAT

3.1 Article 146 1 (b) & para 3(3) VATCA 2010 provides for the zero rate of VAT to apply where goods are transported by, or on behalf of, the purchaser to a country outside of the EU.

3.2 Article 20 EC Directive provides for the meaning for an Intra-Community acquisition of goods.

3.3 Article 31 EC Directive clearly states that where goods are not dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time.

3.4 Article 32 EC Directive confirms that where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins and, where this involves a supply from one EU Member State to another then the place of supply shifts to the receiving EU Member State.

3.5 Article 40 EC Directive confirms the place of supply for goods is the place where the dispatch of the goods ends.

3.6 Articles 63 & 66 EC Directive provides for confirmation on what constitutes a chargeable event is when the goods are supplied thereby requiring the supplier to account for VAT on that supply.

3.7 Article 141 EC Directive provide for the conditions for the supplier to not account for VAT on the supply for an Intra-Community Acquisition.

3.8 Article 146 EC Directive provides for the conditions required for an export of goods to be zero-rated.

3.9 Article 226 (11) EC Directive confirms the requirement for an Intra Community Acquisition invoice to include a reference which confirms the purchaser is required to self-account for the VAT due on the supply.

3.10 Firstly there is a requirement to determine whether SUPPLIER (UK) were correct not to account for VAT on the sale of the yacht on the basis that the supply was an export of goods.

3.11 Both the EC Directive and Irish VAT legislation are clear that, for a supply to qualify as an export of goods certain conditions have to be met.

3.12 Where the purchaser takes responsibility for the transportation/removal of the goods form the EU to a place outside the EU, the customer has to provide the supplier with clear evidence that the goods are removed and, were removed within a specific period of time.

3.13 Where this evidence is not provided then the supplier is required to treat the sale as supplied in the EU and account for VAT accordingly.

3.14 For supplies of goods, an Intra Community Acquisition occurs where the sale requires the goods to be transported or delivered from one EU Member State to another. Where this is the case, the place of supply is the place where the transportation ends.

3.15 Where the supply does not require the transportation or delivery of the goods to another EU Member State then, the place of supply is the place where the goods are when the supply occurs.

3.16 The facts confirm that the initial intention was to export the yacht by sailing, and locating, the yacht in the Caribbean; this would have identified the transaction as an export of goods.

3.17 As the export did not occur then the transaction has occurred within the EU. As such the place of supply has to be established.

3.18 There was no agreement between the parties for the yacht to be transported or

delivered to another EU Member state in order to complete the sale.

3.19 It has been established that the yacht was sailed from France on 5 April 2012 to Spain, arriving 7 April 2012.

3.20 SUPPLIER (IRELAND) took possession of the yacht in French waters, the place of supply is France as the yacht remained there.

3.21 During this time, the yacht remained under the ownership of SUPPLIER (IRELAND), Co Dublin.

3.22 In June 2012 SUPPLIER (IRELAND) then sold its interest in the yacht to SUPPLIER (UK), at this time the yacht was already in Spain.

3.23 SUPPLIER (UK) acquired the yacht in Spain, the place of supply is Spain as there is no evidence to confirm a requirement to transport or dispatch the yacht to Spain for the purpose of completing the sale then the place of supply for the sale of the yacht by SUPPLIER (IRELAND) to SUPPLIER (UK) is Spain.

3.24 In June 2012, SUPPLIER (UK) sold the yacht to our client; the yacht remained in Spain for the purpose of completing the transaction.

3.25 It should be noted that, under SUPPLIER (UK)'s Terms and Conditions, title to the yacht does not pass until payment has been received in full.

3.26 To this extent the title to the yacht could only have been transferred in Spain at the time that final, and full, payment was made.

3.27 As the intention to sale the yacht to the Caribbean changed and, SUPPLIER (UK) was provided with no evidence that the yacht had been exported then the conditions for applying the zero rate of VAT as an export of goods are not met.

3.28 As such, title was transferred in Spain and this, for VAT purposes, triggers a chargeable event.

3.29 To this extent, the place of supply for the sale of the yacht did not require the yacht to be transported or dispatched.

3.30 It is my understanding that for a supply of goods to qualify as an intra EU dispatch of goods that the following conditions are to be met:

- *The supply has to be confirmed as a purchase for a business purpose.*
- *The customer has to be registered for VAT.*
- *The customer has to provide their VAT number and country prefix.*
- *The supplier has to quote both their and the customer's VAT numbers on the VAT invoice.*
- *The goods must be dispatched or transported to another EU Member State for the purpose of the sale.*
- *Correct VIES Returns must be made by the supplier.*

Revenue guidance on this confirms that if any of the above conditions are not met then the supplier is required to account for VAT on the supply.
In consideration of these conditions for this transaction we can confirm that the yacht was not, for the purpose of the completion of the sale, dispatched or transported to another EU Member State. We are not aware whether SUPPLIER (UK) recorded the transaction under VIES.

3.31 There is no evidence available between SUPPLIER (UK) and our client for these transactions to support a position whereby there was a requirement for the yacht to be transported from France to Spain or, elsewhere in order to complete the sale.

3.32 To this extent, we must conclude that Article 31 EC Directive takes precedence, the place of supply is the place where title to the yacht was transferred, in this case, Spain.

3.33 On this basis, the sale should have subject to Spanish VAT.

3.34 Irish VAT legislation is not applicable as the transactions involving the supply of the yacht from the French boat builder through to our Client all occur either in France and Spain.

3.35 The sales invoice issued by SUPPLIER (UK) is flawed as it does not confirm the VAT treatment applicable to the sale or, whether VAT has been accounted for on the sale or the VAT rate applicable; nor does it meet the requirement for an Intra Community supply under Article 226 (11) as no reference is made to the requirement for the customer to account for the VAT due.

3.36 The inclusion of our client's VAT number is therefore unsupportive of an Intra-community supply of goods…"

24. The Appellant further submits that:

"…The fact that our client's VAT registration number was included on the invoice has lead the officer to conclude the supply qualifies under S.24(1)(b) as an intra community dispatch of a new means of transport…

The place of supply reverts to S.29(1) general rules and under S.29(1) the place of supply is the place where the goods are located at the time of the supply…
SUPPLIER (UK) invoice for the sale of the yacht to our client clearly states that title to the vessel is retained until such time that full payment is made – "Title of these goods does not pass until payment has been recovered in full"…

"SUPPLIER (UK) confirm in their document of February 27 2017 that the yacht, REDACTED, was supplied to our client in June 2012. Payment for the yacht by our client was made in three tranches with deposits paid in September 2011 (€30,000) and March 2012 (€101,860.35) with the final balance paid in June 2012 (trade in of yacht valued €74,934).Under SUPPLIER (UK)'s Terms and Conditions, the title to the yacht did not pass until the final payment was made in June 2012.

There was no requirement for SUPPLIER (UK), of the client, to deliver or transport the yacht at the time title to the yacht was transferred."

25. The Appellant submits, in this appeal, that the supply, comes under the 'Place of Supply' general rules contained in S.29 (1)(c) VATCA10, which states that "in the case of goods not dispatched or transported", the place of supply is "the place where the goods are located at the time of supply". The Appellant submits that the place of supply was the place where the yacht was located (Spain), when title passed to the Appellant. The Appellant submits that in respect of the VAT reporting of this transaction, any VAT due, in whatever jurisdiction, is the responsibility of the supplier and no Irish VAT reverse charge obligations arise for the Appellant on this purchase. The Appellant submits that it is entitled to treat the total amount paid by the Appellant, as per the invoice, as being inclusive of any VAT payable wherever.

26. The Appellant submits that the Supplier "has confirmed to the client that they had understood the client's intention was to sail the yacht to the Caribbean, hence no VAT was accounted for on the sale." The Appellant submitted that the yacht was sailed down the coast of north Spain to Portugal. However, as corrosion and electrolysis rendered the yacht unseaworthy, the intention to sail to the Caribbean was abandoned in 2012.

27. The Appellant submits that, as the Appellant did not provide the Supplier with evidence that the yacht had sailed to the Caribbean within 90 days of the purchase date, the obligation falls on the Supplier to remit VAT in Spain, where the yacht was located at the time of supply.

Respondent's Submissions

28. The Respondent set out their analysis of the relevant VAT legislation and why they believe that a reverse charge VAT liability arises for the Appellant in the year ended 30 June 2012, as follows:

"…the Respondent submits that, as confirmed by the Company accountants, the Yacht remained in Spanish and Portuguese waters until it arrived in Ireland in early 2014. This corresponds to the records in the logbook. The records indicate that the yacht was then sold to DIRECTOR A by the Company on 28 February 2014 and that up to that time it had been used by the directors to pursue their sailing activity. This is supported by the Benefit-in-Kind returned by the company for the use of the yacht. The yacht was later registered by DIRECTOR A in accordance with the Mercantile Marine Act 1955 at the IRISH PORT on 27 July 2016.

The Respondent further submits that since it commenced this enquiry into the VAT status of the yacht purchase, both the Company and agent have accepted that VAT is payable. It is the responsibility of each jurisdiction within the EU to ensure the integrity of the operation of VAT.

Revenue submit that it identified the VAT at risk and is pursuing this liability since the appellant has not shown that VAT has been accounted for in any other jurisdiction…

Relevant case law-Xv Skatterverket Case C - 84/09

Part 1 Section 2 VAT Consolidation Act 2010 - Interpretation - Defines a new means of transport, with regard to yachts, as vessels exceeding 7.5 meters in length which are intended for the transport of persons or goods and supplied three months or less after the date of first entry into service or sailed for one hundred hours or less.

Part 4 Section 32 VAT Consolidation Act 2010 - Intra-Community Acquisition of Goods Subsection (1) deems the place of supply where an intra-Community acquisition (ICA) of goods to be the place where the good are when the dispatch or transportation ends. Subsection (2) goes on to specify that without prejudice to subsection (1) where a person acquiring goods quotes his or her VAT registration number for the purpose of the acquisition the place where the ICA occurs shall be deemed to be within the territory of the member state which issued that registration number, unless the person acquiring the goods can establish that such acquisition has been subject to VAT in accordance with subsection (1).

Part 9 Section 75 VAT Consolidation Act 2010 - Obligations of Accountable Persons -

Tax due on intra-Community acquisitions

> *Tax chargeable under section 3(d) or (e) shall be due-*
>
> *(a) on the 15th day of the month following that during which the intra- community acquisition occurs,*
>
> *(b) in case an invoice is issued before the date specified in paragraph (a) by the supplier in another member state to the person acquiring the goods, when that invoice is issued.*

Part 1 Section 3 VAT Consolidation Act 2010 - Charge of value added tax. Except as expressly otherwise provided by this Act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions:

> *(e) the intra-Community acquisition for consideration of a new means of transport when the acquisition is made within the State.*

Based on these facts

- *THE APPELLANT acquired a new yacht Vat free having supplied the company's Vat number to the supplier in June 2012.*

- *The Intra Community Acquisition took place in Ireland.*

- *Per email from APPELLANT'S ACCOUNTANT dated the 28/9/16 THE APPELLANT self-accounted for the Vat in the company Vat return for year ended 30/06/2012*

- *The company yacht was subsequently used for the director's sailing hobby*

- *This is deemed a self-supply and therefore deductibility for Vat is not allowable.*

- *The liability to VAT arose in the VAT period from the 1/ 7/2011 to the 30/6/2012 I have computed the additional liability as follows: -*

Additional VAT 2012	*€216,776*	*@23% =*	*€49,776*
Interest from the 19/07/2012 to date			*€15,784*
Penalty		*5%*	*€2,488*
Total Liability			*€68,048*

…. I am prepared to allow the VAT paid of €28,049 by the company on the supply of the yacht in 2014 as a credit against this liability. I have also factored in this credit in computing the interest payable. The penalty is currently based on this being an unprompted qualifying disclosure in accordance with Paragraph 3.9 of the Code of Practice for Revenue Audit and other Compliance Interventions in the category of careless behaviour with significant consequences.

A Notice of Assessment to Value Added Tax dated 22nd February 2017 for the year from 1st July 2011 to 30th June 2012 in the amount of €49,776 which reflects the additional vat due in accordance with Section 111 VAT Consolidation Act 2010."

Analysis & Conclusions

29. In this appeal we have the unusual situation where the Appellant made a previous Unprompted Disclosure offering to pay VAT in relation to the transaction associated with yacht which is the subject of this appeal. Following this Disclosure the Respondent raised an assessment for VAT although the amounts calculated by the Respondent as owing in respect of interest and penalties, differed. The Appellant then appealed the assessment raised by the Respondent.

30. The following is a relevant extract from that Unprompted Disclosure:

> *"So, it appears to me that a practical solution is to account for VAT on the acquisition in spring 2014 when the vessel first arrived in Ireland. From June 2012 to spring 2014 the vessel operated from Spain and Portugal. Currently the vessel is outside the EU and will sail to the Americas and remain there for some time into the future. You can appreciate that it is difficult establishing "the Member State in which the final, permanent use of the means of transport will take place" when dealing with a vessel.*
>
> *If the above scenario is acceptable to you then the Company is willing to amend its return so that VAT of €49,777 becomes payable; arising in the annual return June 2014. In the same VAT period, the Company had incorrectly returned VAT on the sale of the vessel of €28,049 which becomes repayable. 'Your position is that no input credit could be claimed, an aspect of this query we do not intend to challenge so as to formulate the solution set out in this letter but with which the Company has some concerns. Therefore, the additional VAT for the period ending June 2014 would be the net amount of €21,728.*
>
> *As the VAT return was due on 19th July 2014 and we propose to settle today (31st October 2016) that means that interest of 0.0274% per day for 835 days arise i.e. €4,971.*
>
> *In addition, to expedite matters, the Company will pay a penalty of 5% on the tax arising of €21,728 i.e. €1,086."*

31. As regards a new means of transport, such as a yacht, the application of the VAT rules relating to intra-Community transactions involving such goods is not a simple matter. Those rules, as they might apply to a new means of transport were considered in detail in an EU case called ECJ Case C-84/09 – X v Skatteverket. The Judgement in this EU case is an excellent guide on how to interpret and apply the VAT rules to this appeal.

32. The following is an extract from the Judgement of the Court in ECJ Case C-84/09 – X v Skatteverket :

> *26 "…that those provisions lay down conditions which must be satisfied in order for a transaction to be classified as an intra-Community supply or acquisition.*
>
> *27 Thus, the intra-Community acquisition of goods takes place and the exemption of the intra-Community supply of goods becomes applicable only when the right to dispose of the goods as owner has been transferred to the purchaser and the supplier establishes that those goods have been dispatched or transported to another Member State and when, as a result of that dispatch or that transport, they have physically left the territory of the Member State of supply (see Teleos and Others, paragraph 42, and Case C-184/05 Twoh International [2007] ECR I-7897, paragraph 23).*

28 Moreover, the intra-Community supply of goods and their intra-Community acquisition are, in fact, one and the same financial transaction, such that the two provisions referred to in paragraph 26 of this judgment must be interpreted in such a way as to confer on them identical meaning and scope…

29 Next, it should be noted that the wording of neither the first paragraph of Article 20 nor Article 138(1) of Directive 2006/112 requires that the transport of the goods in question to the purchaser must be commenced or completed within any specific period of time in order for those provisions to be applicable…

31 The application of a time period within which the transport of the goods to the purchaser must be commenced or completed would give purchasers the option of choosing the Member State where the acquisition of a new means of transport would be taxed according to the most favourable rates and terms. Such an opportunity would jeopardise the achievement of the objective of the transitional VAT arrangements applicable to intra-Community trade in that it would deprive those Member States where the actual final consumption takes place of the tax revenue which is rightfully theirs. Leaving such a choice to purchasers would also run counter to the objective of preventing distortions of competition between Member States in trade involving new means of transport…

33 Consequently, the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on observance of a specific time period during which the transport of the goods supplied or acquired must be commenced or completed. However, in order for such a classification to be made and the place of acquisition determined, a temporal and material link must be established between the supply of the goods in question and the transport of those goods, as well as continuity in the course of the transaction…

40 Nevertheless, in order to provide the national court with an answer that is helpful to it in deciding the dispute before it, it is appropriate to specify the conditions under which the acquisition of a new means of transport effected by an individual with the intention of using the goods concerned in a certain Member State should be classified as an intra-Community acquisition.

41 …..Consequently, it is necessary that the classification of intra-Community supplies and acquisitions be made on the basis of objective matters, such as the physical movement of the goods concerned between Member States (Teleos and Others, paragraph 40).

42 As regards new means of transport, however, the application of the rule referred to in the preceding paragraph to intra-Community transactions involving such goods is not a simple matter, given the particular nature of those transactions…..

44 In those circumstances, in order to classify a transaction as an intra-Community acquisition, it is necessary to conduct an overall assessment of all the relevant objective evidence in order to determine whether the goods purchased have actually left the territory of the Member State of supply and, if so, in which Member State the final consumption will take place.

45 In that regard, as the Advocate General stated at point 38 of her Opinion, 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 Member State.

46 In the specific case of the acquisition of a sailing boat, such as in the main proceedings, relevance may also be attached to the flag Member State and the place where the sailing boat will usually be moored and anchored and where it will be stored in the winter.

47 Moreover, in the specific case of the acquisition of a new means of transport, account must also be taken, as far as possible, of the purchaser's intentions at the time of the acquisition, provided that they are supported by objective evidence… That is all the more necessary in a situation where the purchaser acquires the right to dispose of goods in question as owner in the Member State of supply and undertakes to transport them to the Member State of destination…..

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. In that regard, the use of the means of transport, even for leisure purposes, represents only a negligible period of time in relation to the usual lifespan of a means of transport.

51 In view of the foregoing considerations, the answer to the first to third questions is that the first paragraph of Article 20 and Article 138(1) of Directive 2006/112 are to be interpreted as meaning that the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on the observance of any time period during which the transport of the goods in question from the Member State of supply to the Member State of destination must be commenced or completed. In the specific case of the acquisition of a new means of transport within the meaning of Article 2(1)(b)(ii) of that directive, the determination of the intra-Community nature of the transaction must be made through an overall assessment of all the objective circumstances and the purchaser's intentions, provided that it is supported by objective evidence which make it possible to identify the Member State in which final use of the goods concerned is envisaged."

33. The intra-Community acquisition as a VAT chargeable event is therefore subject to two conditions: first, the person acquiring the goods must acquire the right to dispose of them as owner; second, the goods must be dispatched or transported from the State of origin to another Member State. In order for the supply to be tax-exempt in the Member State of origin, that second condition must also be fulfilled. According to ECJ case law, it is necessary that the classification of Intra-Community supplies and acquisitions be made on the basis of objective matters, such as the physical movement of the goods concerned between Member States.

34. It is not apparent, however, from the wording of those provisions what temporal or substantive correlation there must be between the assumption of ownership rights and the beginning or ending of transport to another Member State. The X v

Skatteverket case determined that the first paragraph of Article 20 and Article 138(1) of Directive 2006/112 are to be interpreted as meaning that the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on the observance of any time period during which the transport of the goods in question from the Member State of supply to the Member State of destination must be commenced or completed.

35. The X v Skatteverket case determined that, apart from the time at which transport comes to an end, significance can also be attached to where the sailing boat is registered and where the person acquiring it has a permanent mooring facility for the boat. The place of residence of a private individual acquiring goods can also be an indication of where the boat is ultimately to be permanently used. When determining the end of the period of time, the distance between the State of supply and the State of destination and the lifespan of the goods supplied can inter alia also play a role. If conveyance of the means of transport takes only a very insignificant period of time in comparison with its overall lifespan, it is to be expected that consumption of the goods will essentially take place in the State of destination.

36. Applying these principles to the facts of this appeal is no easy matter.

37. In a letter from Appellant's agent to the Respondent, dated 9 February 2017 it was stated that :

"SUPPLIER (UK) secured the yacht and sold it to the client with the client taking possession of the yacht on 3 April 2012.

- *Possession of the yacht occurred in France, where the yacht was built.*

- *The yacht was sailed in French waters by the client until it was then sailed in the REDACTED arriving in REDACTED, Spain before departing to Portugal in August 2012.*

- *Following this, the yacht departed Portuguese territorial waters and returned to France in October 2013; the yacht remained in French territorial waters until it was sold in February 2014."*

38. Later, more specific facts on the movement of the boat were set out by the Appellant, in its Statement of Case, dated 15/06/20 as follows:

"Summary of relevant facts relating to the purchase of the yacht: Updated
2.1 The yacht was built, on the order of SUPPLIER (IRELAND), Co Dublin, in France by BOAT BUILDER per the certificate dated 21 March 2012.
2.2 BOAT BUILDER sold the yacht to SUPPLIER (IRELAND), invoice date 4 April 2012, the yacht was
moored off the coast of France, REDACTED, at the time the sale occurred to SUPPLIER (UK).

2.3 SUPPLIER (IRELAND), then transferred the title to the yacht to SUPPLIER (UK) on 15 June 2012, the yacht was moored off the coast of REDACTED, Spain at this time.
2.4 SUPPLIER (UK) then sold the yacht to our client on 15 June 2012, on the understanding that the client is to sail the yacht to the Caribbean. The yacht was moored off the coast of REDACTED, Spain at this time.
2.5 SUPPLIER (UK)'s invoice for the sale of the yacht to our client clearly states that title to the vessel is retained until such time that full payment is made – "Title of these goods does not pass until payment has been recovered in full".
2.6 SUPPLIER (UK) confirm in their document of February 27 2017 that the yacht, REDACTED, was supplied to our client in June 2012.
2.7 Payment for the yacht by our client was made in three tranches with deposits paid in September 2011 (€30,000) and March 2012 (€101,860.35) with the final balance paid in June 2012 (trade in of yacht valued €74,934).
2.8 SUPPLIER (UK)'s Terms and Conditions, the title to the yacht did not pass until the final payment was made in June 2012.
2.9 The yacht was located in Spain at this time.
2.10 There was no requirement for SUPPLIER (UK), or the client, to deliver or transport the yacht to another EU Member State to facilitate the completion of the sale at the time title to the yacht was transferred."

39. From the above testimony it is appears to me that the Appellant is of the view that the contractual place of supply (as opposed to the VAT place of supply) was Spain. However, because the yacht, in question, is a new means transport, I need to determine its place of supply under the provisions of section 24 (1) (b) VATCA 2010. It is difficult to determine the "ultimate destination" for the yacht. Under the principles enunciated in the X v Skatteverket case the ultimate destination does not appear to be Spain given that it remained there for only a very short period of time and the Appellant had no obvious nexus with Spain. The Supplier knew from the Appellant that the yacht would at some point soon after the sale be sailed away from Spanish territorial waters.

40. We know the Appellant took ownership of the yacht in Spain. It would appear from all the background facts, circumstances and documentation presented to me that on the balance of probabilities the supplier SUPPLIER (UK) would have been aware that the place of origin of the supply was Spain but that the ultimate destination was somewhere other than Spain. Certainly, SUPPLIER (UK), as Supplier, did not charge Spanish VAT on the transaction which may lead to a presumption that the Supplier did not see Spain as the ultimate destination.

41. The Appellant stated that:

" SUPPLIER (UK) has confirmed … that they had understood the client's intention was to sale the yacht to the Caribbean, hence no VAT was accounted for on the sale…

2.18 To conclude, the initial intention by our Client was to purchase the yacht and sale it for use in the Caribbean, hence SUPPLIER (UK) treated the sale as a zero-rated export.

2.19 To do so, our client was required to provide SUPPLIER (UK) with evidence that the yacht had
sailed to the Caribbean within 90 days from the date of purchase; where no evidence is provided then SUPPLIER (UK) is required to correct the position for VAT accounting purposes; as
the sale completed in Spain and the yacht remained there, then the place of supply for the sale is Spain…"

42. I do not accept this contention by the Appellant. The yacht remained within Portuguese or French territorial waters for a period of approximately nineteen months prior to it being brought to Ireland upon a sale to one of the directors in 2014. The time the yacht spent in Spain was only circa two months. It is my view that under the principles enunciated in the X v Skatteverket case, the ultimate destination for the yacht was either Portugal or France or Ireland. All three destinations are within the EU. This means that under section 24(1) VATCA 2010, the acquisition is an intra-Community acquisition for Vat Purposes.

43. Under section 32 (2) VATCA 2010, when a person acquiring goods, such as the yacht, quotes his value added tax registration number for the purposes of the acquisition, as was the case in this appeal, the place where the intra-Community acquisition of goods occurs is deemed to be within the territory of the member state which issued that registration number, (Ireland) unless the person acquiring the goods can establish that such acquisition has been subject to VAT referred to in the VAT directive in accordance with section 32(1) VATCA 2010.

44. In this case the Appellant has not been able to show that VAT was accounted for in any EU territory in relation to this acquisition. Accordingly it is my view that the place of acquisition of the yacht for VAT purposes is deemed to be Ireland and Irish VAT is accountable in this acquisition.

45. In the Unprompted Disclose made set out in Appendix 1, the Appellant states;

"….that no input credit could be claimed, an aspect of this query we do not intend to challenge…."

This position appears to be maintained by the Appellant throughout its later submissions. I agree that the immediate and personal use of the yacht by the directors after purchase by the Appellant, means that it is precluded from claiming the simultaneous reverse charge VAT input credit in respect of the yacht purchase in 2012.

Determination

46. Based on a consideration of the evidence and submissions together with a review of the documentation furnished and based on my analysis above, I determine that the

assessment of €49,776 VAT due for the period 1/ 7/2011 to the 30/6/2012 in respect of the purchased yacht should stand.

47. The appeal hereby is determined in accordance with section 949AK TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

Designated Public Official

10 February 2021

Appendix 1

(Appellant's Unprompted Disclosure – 31 October 2016)

"Dear REDACTED,

Further to your recent query and your communications with the Company's tax agents, APPELLANT'S ACCOUNTANTS.

You had referred to section 32 VATCA 2010, Intra-Community acquisitions of goods (Place of intra-Community transactions) and later you had referred to the ECJ judgement in Case C-84/09 X v Skatteverket. My tax agents have examined these and discussed same with me; however, I believe that there is still a many degrees of uncertainty surrounding the issue. I see that the taxpayer in the case you mentioned queried the application of Intra EU rules and the definition of new means of transport before he acquired his vessel and informed his local tax authorities that he intended to exploit a perceived advantage for himself. In our case there was no intention to exploit any perceived advantage.

Having examined the decision in Case C-84/09 X v Skatteverket, which states at paragraph 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. In that regard, the use of the means of transport, even for leisure purposes, represents only a negligible period of time in relation to the usual lifespan of a means of transport."

My concern is that other EU Member States may wish to apply VAT, and if their interpretation was correct then, in strictness, the Company should discharge VAT to that Member State. However, with the complications of EU VAT rules, local legislation, local practices and the language barrier this will be difficult to establish. My tax agents have informed me that they do not have expertise in French, Spanish or Portuguese VAT administration and have recommended that the Company engage VAT AGENT or some similar expert to address this issue if required.

So, it appears to me that a practical solution is to account for VAT on the acquisition in spring 2014 when the vessel first arrived in Ireland. From June 2012 to spring 2014 the vessel operated from Spain and Portugal. Currently the vessel is outside the EU and will sail to the Americas and remain there for some time into the future. You can appreciate that it is difficult establishing "the Member State in which the final, permanent use of the means of transport will take place" when dealing with a vessel.

If the above scenario is acceptable to you then the Company is willing to amend its return so that VAT of €49,777 becomes payable; arising in the annual return June 2014. In the same VAT period, the Company had incorrectly returned VAT on the sale of the vessel of €28,049 (see Note 1 below) *which becomes repayable. Your position is that no input credit could be claimed, an aspect of this query we do not intend to challenge so as to formulate the solution set out in this letter but with which the Company has some concerns. Therefore, the additional VAT for the period ending June 2014 would be the net amount of €21,728.*

As the VAT return was due on 19th July 2014 and we propose to settle today (31st October 2016) that means that interest of 0.0274% per day for 835 days arise i.e. €4,971.

In addition, to expedite matters, the Company will pay a penalty of 5% on the tax arising of €21,728 i.e. €1,086.

The total amount payable will be €27,785 and this will be paid via ROS mandate.

Please examine the above and contact my tax agents, APPELLANT'S ACCOUNTANT, as I will be unavailable for the next number of week.

Subject to the issues re which EU State has the right to levy VAT, as mentioned above, to the best of the Company's knowledge, information and belief, that matters contained in the disclosure are correct and complete.

Yours faithfully

DIRECTOR B

Company Secretary"

(Appeal Commissioner's Note 1: When the yacht arrived in Ireland the company sold it to DIRECTOR A (director) for €150,000 including VAT of €28,049 per invoice dated the 28/02/2014. While this VAT was returned and paid in the annual VAT return for the year ended 30/06/2014, an amended return was filed on the 17/05/2017 by the Appellant and this VAT payment was claimed back by the Appellant.)