

**Zero rated exports of goods  
JP Commodities Limited (JPCL) VTD 19904**

This case, released in late January this year, revolved on the two provisions in VATA 1994, s30 (8) (a) which allows for the zero rating of supplies of exported goods where:

- The goods are exported to a place outside the member states; or
- The supply in question involves both (i) the removal of the goods from the United Kingdom; and (ii) their acquisition in another member state by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member state

JPCL made two sales of electronic goods (hand held games machines and MP3 players) to Bronteum (B) a company registered in Gibraltar. By agreement, the goods were delivered to an address in Belgium and JPCL treated the supply as a zero-rated sale made outside the EU and accounted for VAT accordingly. HMRC challenged this and issued an assessment for the output VAT which it said JPCL should have accounted for.

In court, counsel for JPCL argued that if the sale was not outside the EU (as determined by B's place of establishment in Gibraltar) it was a supply to a 'person liable for VAT' or a taxable person in the EU. Evidence of this was that B sold the goods from Belgium to Luxembourg.

However B was not registered for VAT in Belgium and did not charge VAT on the onward sale. Consequently, arguments in tribunal centred on whether the obligation for an entity to register for VAT or whether evidence that it has in fact registered for VAT determine whether than entity may be deemed to be 'a person who is liable for VAT'.

VAT Notices 703 and 725 (which have the force of law) make it a pre-requisite of zero-rating on despatches that the seller has the VAT Registration Number of the buyer in the country concerned, and cites it on the invoice. JPCL tried to argue that as this requirement is listed under the title "Can I zero-rate a supply of goods to a VAT Registered customer in another Member State?" it does not apply where the customer is not VAT registered. However, the Tribunal Chairman disregarded this argument on the grounds that it is the test which has the force of law and not the heading.

The Chairman dismissed JPCL's appeal on the grounds that the principle of VAT law is that the end user accounts for VAT so where a vendor cannot establish that its customer is in a position to account for VAT, therefore, the vendor must account for output tax.

While it is true that the decision used language such as: the UK legislation 'implied'; it must be 'assumed' what the EU legislation meant; the EU council could not have 'intended'; 'purposive approach'; etc which all confirms that the judgement reached is NOT supported by the actual UK legislative wording.

The decision does seem logically sound as it avoids VAT falling into a black hole; although it is somewhat harsh that, in effect, JPCL is in this instance, effectively penalised for B's failure to fulfil its obligations and register. The case also highlights a logical flaw in EU law in that the definition of a 'taxable person' in no way incorporates their registration position. Whether an entity is a taxable person in EU law relates to its business position rather than its VAT position; UK law is slightly different as the UK definition is someone who is, or is liable to be, VAT registered.