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Debt Collection and Longer Periods

HBOS plc v HMRC

Court of Session, 30 December 2008

HBOS grants credit in a number of ways and its own collections department deals with 90% of defaulters. However, HBOS also uses external agents to collect arrears and all other outstanding amounts when there are complications such as the defaulter having moved, or refusing to answer correspondence.

HBOS argued that supplies by these agents were the exempt granting or negotiation of credit, in that the agents varied the terms of the contract between HBOS and the customer, allowing extra time to pay, or payment of a reduced sum overall, in order to secure repayment of the maximum amount possible. Such variation of credit terms was, to HBOS, the granting or negotiation of credit.

HMRC argued successfully in the Tribunal that what the agents supplied was a debt collection service, with any element of credit negotiation being ancillary. The Tribunal also held specifically that the agents did not grant credit by extending the period over which repayment had to be made.

The Tribunal concluded thus:

'It is the clear view of the Tribunal that, borrowing the words from *CPP*, that the dominant purpose of the entire economic arrangement was the recovery of money due to [HBOS]. The Tribunal are of this view despite the wording of the revised agreement, and despite arguments for [HBOS] that they perceive the service they receive as one of debt negotiation. That said they have no doubt whatsoever that negotiations and skilled negotiations at that, required to be undertaken and were undertaken and that a substantial discretion was given to the trained staff of the agents in how they achieved their purpose.

'The Tribunal were unable to find that the negotiation involved in the recovery of money for [HBOS] was an aim in itself, although it might be a desirable feature for various reasons. They find that it was truly ancillary to the dominant purpose of debt recovery. Further it does not fall to be regarded as "intermediary services" in terms of the domestic legislation since we do not find that the agents act in an intermediary capacity in relation to both debtor and creditor. In short, the service supplied to [HBOS] was a single supply of debt recovery.'

The Court of Session dismissed HBOS's appeal. The Tribunal had found as a fact that HBOS's principal objective, using its agents' skills, was to recover as much of the debt as possible. Offering

the debtor the opportunity to pay less than the amount due, or to pay it over a longer period of time, or both, might be the most effective means of securing payment of something, rather than little or nothing. However, the objective remained the same. Indeed, the standard contract stated that the agent would 'typically renegotiate the terms on which credit is granted to the borrower with a view to maximising recoveries' by HBOS. Moreover, the sole measure of the agent's remuneration was an agreed percentage of the amount recovered: the agent was paid by the results achieved in pursuance of the objective of 'maximising recoveries'. Those were the essential features of the arrangement between HBOS and the agent. They pointed towards the essential aim or dominant purpose of the service supplied being debt recovery. The exercise of skills by the agent, including those that might be described as negotiation directed to that end, appeared to be elements in the debt collection service the agent provided. Negotiation was not an end in itself, let alone an essential aim.

HMRC v The Raj Restaurant and others

Court of Session, 30 December 2008

From 1995 until 2002 the Raj restaurant was purportedly run by a series of companies. However, the VAT Tribunal held that those companies were shams and the restaurant was in fact run throughout by a partnership of four people. HMRC had made an assessment on the partnership for the period until 31 July 2002 but it suffered from a number of defects:

- * HMRC failed in 2002 to specify a longer accounting period lasting from the date the partnership ought to have registered in 1995 until 31 July 2002

- * such longer period as may have been specified was done by certificate of registration in 2007 and that appeared to specify a longer period lasting from 1995 to 2007

- * HMRC had not made a global assessment on the partnership, since the assessment, insofar as it specified any accounting periods, specified those of the sham companies – the Court of Session noted that this resulted from HMRC's mistaken view that it was possible to transfer the liabilities of the companies to become liabilities of the partnership.

HMRC's appeal was therefore dismissed, although since dishonesty has been alleged against the partnership, HMRC might not be out of time to re-assess.

Chris Reece summarises two recent Court of Session decisions on VAT

Single Authorisation:

An idea whose time has come?

Ever since the introduction of the European Customs Code in 1992, indirect tax practitioners and businessmen alike have looked forward to the possibility that they might be able to deal with only one customs administration throughout the EU, allowing a single point of administration for imports; the use of customs duty reliefs; the use of a very limited number of customs agents; and a single specialist team to control imports throughout the EU. However, there have been significant obstacles to this idyllic state of affairs.

Firstly, because the EU's customs administrations keep a percentage of the duty collected (10% in 1992 but 20% currently) to fund their activities, they are financially disincentivised from separating the physical control of imported goods from the reporting of them. Secondly, excise duties (and national restrictions over matters such as immoral publications) make it difficult for sovereign nations to cede control of imports to other Member States. And finally, the big issue is VAT. This high-denomination national tax on imported goods flows to the country of import and the act of clearing goods for customs purposes is a deemed supply in many countries. There could be no prospect of movement on a single point of administration of EU imports until a means could be found to redistribute import VAT to the country in which the goods would be commercialised, and to ensure that deemed supplies are recognised in the country where the import physically occurs.

In 2000, when I was interviewed for my current post, I was asked whether the company should set itself up to take advantage of Single European Authorisation (as it was then known). My response at the time was that while the underlying enabling legislation was at least partly in force, there was no realistic prospect of such an option becoming feasible in the short to medium term, and so it has proved. However, in the last year the most influential opponents of the idea among the EU's Member States seem to have radically changed their opinions, and now seem ready to do what is necessary to bring it about. With this new impetus comes a new name: Single Authorisation for Simplified Procedures (SASP). It now seems a fair bet that SASP will be achievable within the next two years if companies can move fast enough to take advantage of it within that time scale.

New legislation

In November 2008 the EU quietly slipped Regulation 1192/2008 into the Official Journal and most of it is already in force, with a few elements

delayed until July 2009. The preamble to this provision makes enticing reading:

'(2) Taking into account the Lisbon strategy, which aims at making the EU the most competitive economy in the world, it is crucial to create a modern and simplified environment with conditions for a real internal market where trade competitiveness will increase and distortion of competition between companies in different Member States is avoided. Single authorisations for simplified procedures, as well as the integrated single authorisation, allow operators to centralise and integrate accounting, logistics and distribution functions with consequent savings in administrative and transaction costs, and is a genuine simplification. It is therefore appropriate to extend the provisions on single authorisations to the use of the simplified declaration and to the local clearance procedure ...

'(7) It is necessary to improve the application and authorisation procedure for single authorisations by reducing the time taken to exchange information and by developing common rules, to avoid delays in granting such authorisations. These rules should allow the customs authorities to supervise and monitor operations under single authorisations without administrative arrangements disproportionate to the economic needs involved ...

'(8) The conditions and criteria for granting both national and single authorisations for the simplified declaration and the local clearance procedure should be identical in order to achieve harmonisation within the single market ...

'(12) It should be clarified that a customs declaration can, with the approval of the customs authority or authorities involved in granting an authorisation, be lodged at a customs office different from the one where the goods are presented or will be presented or made available for control ...

'(27) Annex 67 of Regulation (EEC) No 2454/93 contains a common application and authorisation form for customs procedures with economic impact and for end-use. This form is to be used whether one or more than one customs administration is involved. It is appropriate to extend the use of Annex 67 to cases where an application is made for an authorisation to use the simplified declaration or the local clearance procedure, both at national level and when more than one customs administration is involved.'

The very clear intent of this legislation is to improve EU competitiveness by allowing a company to centralise its EU customs reporting activities irrespective of the physical location of the goods, enabling a company to deal with just one customs administration. By stressing the value of single

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pan-EU authorisations for duty reliefs, and extending the programmes to which such simplifications apply, this legislation makes it possible to deal with Free Circulation imports, duty relief arrangements and Community Transit movements from a single point of contact, located at some point within the EU that is attractive to the importer. If the practice follows the intent, this is a very significant development indeed.

The political environment

The obstacles to developing a workable SASP arrangement are listed above – and they have been significant. The extent to which the

The ability to interface with only one customs computer; to train and maintain customs specialists on only one site and in only one language; to deal with the interpretations of only one customs administration; and to utilise a minimal number of clearance agents – all that is deeply attractive

November regulation can be translated into practice depends upon the political will of those Member States which have traditionally dragged their heels. If they continue to do so, the new legislation will remain unused in practice, because there is still a need for all affected customs administrations to agree a method of working together.

In recent years SASP has been the responsibility of Ms Maria Fernanda Barros within DG TAXUD. She appears to have had considerable success in cajoling the reluctant Member States into action and persuading them that SASP is in their interests. It is not easy to pass European law and in the customs field it requires the input and agreement of the local customs administrations. It seems pointless for legislative delegates to contribute all their effort if there is no intention for their countries to use the law. But even if a few reluctant Mediterranean or Eastern countries decline to make the administrative concessions necessary to make the system work, this should still leave a considerable group of countries willing and able to work together.

The new customs vista

An interviewee being asked about SASP today might be able to engage in a more optimistic discussion. He might point out that the extension of the pan-European authorisation to include End Use relief and Simplified Declaration procedures means that pretty much all activities can be encompassed, so there is no need for local off-

shoots to make exceptional declarations in countries other than the primary declaration country. He might also note that SASP hugely reduces the cost and burden of AEO authorisation.

A group of companies typically goes to market through different legal entities in different countries – a GmbH in Germany, a SA in France and a limited company in Ireland. As AEO status is entity-specific, this means that multiple AEOs have to cover the group's multiple import activities. Ms Barros is adamant that where a group tidies up its EU-wide import arrangements using SASP, making declarations through one centralised location notwithstanding the physical location of the goods (as well as controlling duty reliefs through that location), the declaring customs entity is the only one requiring AEO status – a huge benefit.

SASP applicants have to display pretty much the same capabilities and risk profile as an AEO, so authorisation will often be protracted. Ms Barros expresses the likelihood that it may take a year, due in part to the need for the affected Member States to agree between them how the VAT and duty revenues will be split (the legislation does not prescribe a methodology for this), and how matters such as the collection of excise duty will be arranged. This is where the political will is required. However, where the applicant is already an AEO, the intention is that the process should take 60-90 days, though experience suggests that may be optimistic.

Conclusion

If it works as intended, SASP will present the biggest opportunity to the larger importers for a generation. The ability to interface with only one customs computer; to train and maintain customs specialists on only one site and in only one language; to deal with the interpretations of only one customs administration; and to utilise a minimal number of clearance agents, who would do little other than routine communication with the local administration – all that is deeply attractive both financially and in compliance terms. In addition, those customs administrations that have traditionally been awkward to deal with (you know who they are!) will have to decide whether to discourage centralisation in their country by remaining awkward (and in a post-SASP world, will then deal primarily with physical controls for the larger importers, working as a contractor for the country where the declaration takes place), or to adopt a more business-centric approach to import control, in which case they may compete for large-scale declaration activity. Either works well for business. Whether the practical obstacles to SASP will continue to frustrate both business and the EU Commission remains to be seen; but for the first time, big business has a clear incentive to invest the time and the capital necessary to test the water.

Let's hope that it turns out to be a fruitful exercise for all concerned.

Funding: Grant or Consideration?

The recent decisions of the VAT Tribunal in *Age Concern Leicestershire and Rutland* 20,762 and *Bath Festivals Trust Ltd* 20,840 have once more brought into focus the VAT liability of local authority funding provided to the voluntary and charitable sector and whether this constitutes grant-aid outside the scope of VAT or consideration for a potentially VATable supply.

Historically the leading decisions on this subject are *Hillingdon Legal Resources Centre* 5,210 and *Wolverhampton Citizens Advice Bureau* 16,411, both of which concerned the provision of local-authority-funded 'free' legal advice.

In *Hillingdon*, decided as long ago as 1990, the Tribunal found there was insufficient link between the legal advice services provided and the funding received and thus the latter must amount to grant-aid.

Wolverhampton, decided in 2000, followed *Hillingdon*, even though there was a detailed service level agreement laying down the degree of 'free' legal advice the Bureau must deliver in order to receive the funding. As noted in the recent *Bath Festivals Trust* decision, however, the Tribunal in *Wolverhampton* appeared to almost slavishly follow *Hillingdon* notwithstanding the apparently different factual scenario.

A change of approach

Since 2000 though, two other decisions have thrown into doubt the previous established wisdom that, notwithstanding the existence of a service level agreement, local authority funding is generally grant-aid outside the scope of VAT.

In *Pre-School Learning Alliance* 17,737 in 2003 the Tribunal held that funding provided by four local authorities on the basis of service level agreements in pursuit of the delivery of services by the Alliance for which the authorities had a statutory responsibility – specialist childcare services in this case – amounted to consideration for a supply on which VAT was accordingly payable.

This was broadly the logic followed by the Tribunal in *Edinburgh Leisure & others* 18,784 in 2005, that funding payable by a local authority under the terms of a service level agreement in order to secure the delivery, by the funded party, of services for which the authority has a statutory responsibility – leisure services in this case – is consideration within the scope of VAT.

There was thus recent evidence of a change of stance by the VAT Tribunal to the treatment of local

authority funding when it came to consider the case of *Age Concern Leicestershire and Rutland*.

Welfare care

The decision in *Age Concern* is somewhat confusing in that, at first glance, it appears that *Age Concern* supplied welfare care to assessed need clients, care which must, therefore, be exempt from VAT – *Age Concern* being a charity – even though that care was commissioned and paid for by Leicestershire County Council and Rutland County Council and two local NHS Primary Care Trusts (PCTs).

However, this is not the interpretation placed on the decision by *Age Concern*, nor by its Local VAT Officer; certainly the decision is ambiguous and it is probably, therefore, legitimate to rely on the view of the parties to the case as to what was actually decided.

The problem with the *Age Concern* case is that the issue was clouded by an avoidance motive in that *Age Concern* had set up a subsidiary company to deliver the welfare care, that subsidiary being neither a charity nor subject to state regulation, such that its provision of welfare care was liable to VAT at the standard rate. Although HMRC dropped its avoidance argument and focussed on the facts, this nevertheless does seem to have influenced the decision.

Age Concern's object in restructuring the arrangements – something reportedly done with the agreement of the local authorities and PCTs concerned – was, of course, to maximise its VAT recovery position without disadvantaging the commissioning local authorities and PCTs, which would simply recover the VAT charged under their respective recovery regimes (section 33, Value Added Tax Act 1994 for the local authorities and section 41 in the case of the PCTs).

To this end, *Age Concern* assigned its contracts with the local authorities and PCTs – to provide welfare care to the commissioning bodies' assessed need clients – to the subsidiary company. The company, however, not having the resources to deliver, then engaged *Age Concern* to act as its agent in fulfilling the contract.

To this end, both *Age Concern* and its Local VAT Officer assert that the decision is confined to whether *Age Concern's* supplies (of staffing and support services) to the subsidiary company under the agency agreement amounted to supplies of welfare care, the Tribunal ruling that they

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did and so were exempt from VAT, thus defeating the avoidance attempt.

Notwithstanding the ambiguity of the decision, therefore, in *Age Concern's* view, and that of its Local VAT Officer, no concern was given to the subsidiary's onward supply, whether this, in turn, was of welfare care or to whom that supply was made: the client or the commissioning local authority or PCT.

Whether the Tribunal was correct to hold that the supply by *Age Concern* to the subsidiary com-

Pertinently, the existence of a service level agreement in this context is neither here nor there; what is important is whether that service level agreement amounts to a contract for reciprocal performance or merely grant funding conditions

pany amounted to VAT-exempt welfare care, this supply being one stage removed from the actual provision of welfare care to nominated clients, is a moot point but it appears that, notwithstanding *Age Concern's* defeat, such arrangements may become increasingly common, at least one example existing of an analogous arrangement where a private school has set up a subsidiary company to supply, consequently VATable, educational services to a local authority.

Nevertheless, the main issue the decision has highlighted, given that *Age Concern* (or rather the subsidiary company) is continuing to charge VAT on the local authorities' and PCTs' funding, is whether the latter can recover such, especially given that the decision of the Tribunal seems to imply that the services in question were supplied to the individual beneficiary clients.

Third-party consideration?

This, in fact, raises a broader issue, apparently taken as read in all the previous decisions; whether the funding local authority is entitled to recover the VAT charged if it is decided that its funding is consideration for a VATable supply. Put succinctly, is there a supply to the funding authority or is its funding actually third-party consideration paid on behalf of the individual beneficiaries of the services commissioned.

On this point, Leicestershire, Rutland and the two PCTs are clearly receiving something from *Age Concern* in return for their payments, the supply of having their clients – for whom they have a statutory responsibility to provide welfare care on the basis of assessed need – provided with that care by *Age Concern* (or, at least, by *Age Concern's* subsidiary company).

And this is typical of local authority funding arrangements, in that generally the authority is commissioning the delivery of services for the benefit of the local community rather than for its own direct consumption.

The nearest the Courts have come to considering this question is in the 'landmark' case of *Redrow Group plc* [1999] STC 161, which concerned estate agency services supplied to homeowners but paid for by *Redrow* in recognition of the homeowner agreeing to buy a new *Redrow* house. The House of Lords held that the estate agents nevertheless supplied a VATable service to *Redrow*, this consisting of the right to have the estate agency services provided to *Redrow's* nominated homeowners.

And this was largely followed by the Court of Appeal in the currently ongoing case of *Loyalty Management UK Ltd* [2008] STC 59, where reward goods were provided to Nectar cardholders which the Court held to be a VATable service supplied to LMUK consisting of the right to have rewards provided to nominated cardholders. This case is, however, now subject to a reference to the ECJ.

Real world or management?

Assuming the foregoing analysis is correct, the remaining question – again not addressed in *Age Concern* or any of the previous decisions – is whether such a supply, of the right to have something supplied to third parties, follows the VAT liability of that something supplied, the underlying 'real world' supply – that is, VAT-exempt as welfare care in the *Age Concern* case – or rather must always be liable to VAT at the standard rate as a supply of 'management services'.

Though not argued, the latter was held to be the case in *Edinburgh Leisure*, even though the 'real world' supply was of VAT-exempt sports services supplied to the public by a leisure trust. And this has been followed in the recent *Bath Festivals Trust* decision, where the Trust's supplies of cultural services were otherwise predominantly exempt from VAT.

Bath Festivals Trust

After the uncertainty of *Age Concern*, the VAT Tribunal's decision in *Bath Festivals Trust* is reassuringly clear.

The Trust received funding from Bath and North East Somerset Council for the provision of a cultural events programme, the Tribunal holding that this was a VATable service supplied by the Trust to the Council, even though the principal beneficiaries of that service were the people of Bath.

In arriving at this decision the Tribunal appears to have been most heavily influenced by the *Edinburgh Leisure* case. Indeed, the Tribunal in *Bath Festivals Trust* went one step further than *Edinburgh Leisure* – and indeed *Pre-School Learning Alliance* – in holding that it did not matter

that, unlike in those cases, the local authority did not have a statutory duty to provide the funded services.

The fact that the Council had a discretionary statutory power to undertake the services if it wished, a clearly demonstrated political will and determination to do so but a lack of in-house resource, was sufficient to support the contention that it undertook said statutory power by commissioning the desired services from the Trust.

And, responding to arguments by HMRC that the funding was merely financial support towards the Trust's operating expenses, rather than explicit consideration linked to a discrete supply, the Tribunal held that there was sufficient nexus and reciprocal performance between the payment made by the Council and the services delivered by the Trust for the former to constitute consideration for the latter.

Perhaps of enduring interest, the Tribunal made an observation that goes to the heart of the difference between grant-aid and consideration for a supply. Contrasting grant received by the Trust from the Arts Council and consideration received from the local authority, the Tribunal observed that:

* with a grant, the initiative generally comes from the grantee, seeking funding to support the pursuit of its own objectives, any benefit to the grantor being merely incidental and not a benefit they would otherwise actively seek: such a grant may be supported by a service level agreement but this does no more than permit the grantor to ensure the monies are expended as intended

* with consideration, the initiative generally comes from the commissioner or customer actively seeking the provision of something it requires in pursuit of its own objectives; in this case the service level agreement amounts to a contract under which the parties are bound with appropriate legal remedies for non-performance.

Conclusion

Though some questions remain – notably whether the right to have supplies made to third parties must always be a VATable supply or should follow the VAT liability of the underlying 'real world' supply to those third parties – and it will remain to consider each case on its merits in the light of the underlying documentation, the case law continues to support the contention that local authority funding can, in the appropriate circumstances, amount to consideration for a VATable supply, which will often be to the mutual benefit of both fundee and funder.

Pertinently, the existence of a service level agreement in this context is neither here nor there; what is important is whether that service level agreement amounts to a contract for reciprocal performance or merely grant funding conditions.

And in this respect, the comments of the Tribunal in *Bath Festivals Trust* are informative: that is, did the initiative come from the grantee seeking funding to support the pursuit of its own objectives, or from the funding authority seeking the provision of something it requires in pursuit of its own statutory or political objectives?

The VAT Package

HMRC has issued a consultative document (see <http://snipurl.com/a3zyz>) to expose draft UK legislation which is required to implement the first phases of changes in EC Law to the VAT place of supply of services (and related issues) covered by Directive 2008/08/EC. The changes will come into effect in national legislation between 1 January 2010 and 1 January 2015.

Place of supply of services

From 1 January 2010 the new basic rule for the place of supply of services will tax B2B supplies of services at the place where the customer is established and no longer at the place where the supplier is established, as is currently the case. For B2C supplies of services, the general rule for the place of supply will continue to be the place where the supplier is established. However, from 1 January 2015 the place of supply of intra-EC B2C supplies of telecoms, electronically supplied services and broadcasting will be where the customer is established or usually resides. The Commission will report on the feasibility of the new B2C rules before entry into force. As now, there will be exceptions to the general rule for certain services, with a view to achieving taxation in the place of consumption. In the main these will be implemented on 1 January 2010, with further changes to the 'where performed' rule from 1 January 2011 and for long-term hire of means of transport from 1 January 2013.

EC Sales Lists for services

Currently EC Sales Lists are only required for intra-EC supplies of goods. From 1 January 2010 they will also need to be completed for intra-EC taxable supplies of services subject to the reverse charge in the customer's Member State.

One Stop Scheme

From 1 January 2015 businesses making intra-EC cross-border B2C supplies of telecoms, broadcasting and electronically supplied services will be required to account for VAT due in the Member State where the customer belongs. They can do this either by registering for VAT in their customer's Member State or opting to account for VAT on these supplies via the One Stop Scheme (OSS). The OSS will be optional for businesses. It will enable businesses making such supplies in a number of Member States to register and declare VAT due on those supplies throughout the EC via a single Member State.

Same Number Given New Acronym

In this article I am going to discuss the Economic Operator Registration and Identification (EORI) Scheme. This article is based on information provided by HMRC on its website.

Who will it affect?

If you are approved, or wish to be approved, as an Authorised Economic Operator (AEO), and/or are required to provide pre-arrival/pre-departure information, or are involved in the import, export or movement of goods under a transit procedure, you will need an EORI number.

Background

The measure to enhance security introduced by the Security Amendment (Council Regulation 648/2005) and its Implementing Provisions, provide for:

- * the analysis and electronic exchange of risk information between customs authorities and the Commission under a common risk management framework

- * the provision to the customs authorities of pre-arrival and pre-departure information on all goods entering or leaving the customs territory of the community

- * the granting of AEO status to reliable traders.

The implementation of the above measures would be more effective if persons could be identified by reference to a common number unique to each person. The EU Commission and Member States' customs authorities are therefore finalising legislation for the introduction of EORI.

Purpose

The unique identification number will serve as a common reference for the identification of economic operators, or persons, in their relations with the customs authorities of the Community, and for the exchange of information between these authorities and, where appropriate, between customs authorities and other government departments and agencies.

EORI implementation in the UK

The implementation of EORI in the UK will replace the existing system (TURN, or trader unique reference number), which will cease to exist from 1 July 2009. HMRC will, however, retain a number of TURN

features in the EORI system, in particular the format of the number itself.

Although EORI does not 'go live' throughout the EU until 1 July 2009, HMRC intends to commence the EORI registration procedure from early April 2009. This will allow a three-month dual running period of both the EORI and the TURN systems operating simultaneously until 30 June 2009. From 1 July 2009 all TURN numbers will become obsolete and only EORI numbers will be used and recognised.

All UK EORI numbers will start with the letters GB. Most will be followed by a 12-digit number based on the EO's VAT number – for example, GB 123 4567 89 000. This is expected to mean that 98 per cent of existing TURN-holders will have EORI numbers which are exactly the same as their current TURN.

The structure of the EORI numbers will be the same for EOs which are not registered for VAT.

HMRC will have a small number of 'dummy' EORI numbers, similar to but probably fewer than existing dummy TURNS. All will be preceded with the letters GB. HMRC will provide further details in the near future.

For new importers or exporters needing information on the construction and allocation of TURNS and how to apply for a TURN, traders should go the UK Tariff, Volume 3, Part 3, paragraph 3.1.10, which is at present on page 3-24 of the 2008 Tariff. This also includes an explanation of Pseudo TURNS.

HMRC will allocate EORI numbers to EOs in two separate ways:

- * one for EOs which hold a TURN and have used it in the last two years

- * the other for new EOs, or EOs which have not used their TURN in the last two years.

An interrogation of HMRC's internal systems has shown that 270,000 different TURNS and Pseudo TURNS were used in the past two years. Of that number approximately 265,000 will automatically qualify for an EORI number.

For those who qualify, HMRC intends to send a registration notification, detailing the trader's name and address, VAT number (if applicable) and the allocated EORI number, along with an outline of EORI.

This notification will invite the trader to advise HMRC if:

- * the details are incorrect
 - * the trader does not require an EORI number
- or
- * the trader objects to limited data being pub-

Ernest Grayston discusses the replacement of TURN with EORI

lished on the Commission website.

Notification will then allow these EOs to use their EORI number with immediate effect on their declarations. (In effect EOs will be using their EORI numbers in exactly the same way as they previously did with their TURNs.)

If no amendments are required the EO will not need to reply to the notification.

The issuing of new TURNs will cease on 31 March 2009. From 1 April 2009 the new EORI registration process will commence for new EOs and EOs which have not used their TURN in the last two years. This also includes EOs not established in the customs territory of the EU but which are involved in customs-related activity in the EU.

Application

The EORI application process will operate as follows.

The applicant will complete an EORI application form and send it to the EORI processing team in Cardiff.

There will be two ways an EO can complete an application form. Initially the applicant may send a hard copy by post or download an electronic version and return by email. HMRC hopes to replace the email option in the near future by providing the facility to allow completion online through Businesslink.

When an application is received the EORI team will check for completeness. If there are any errors or missing information the form will be returned to the EO for correction.

If the form is correctly completed Cardiff will validate the information contained in the application against departmental or other records.

The information will be entered onto a locally maintained spreadsheet.

The national and EU central databases will be updated.

A letter containing the allocated EORI number will then be sent to the EO.

Non-qualification

What will happen to existing TURN-holders which do not qualify for an EORI number?

HMRC has identified a significant number of cases where the TURN-holder is a branch or division and therefore not entitled to an EORI number, as these are not legal entities.

On 1 April 2009 HMRC will write to these traders and advise them that they are not entitled to an EORI number but may continue using their existing TURN until 30 June 2009. However, HMRC will register the parent/holding company with an

EORI number, which must be used from 1 July 2009.

Branches and divisions

How will EOs be able to identify their branches/divisions after 1 July 2009?

Currently EOs tend to use TURNs to enable them to identify imports/exports and revenue due against individual branches/divisions. As branches/divisions will not qualify for an EORI number, this may cause considerable inconvenience to a relatively small in numbers, but at the same time significant, section of the trading community. As a result HMRC has devised some solutions to assist EOs to associate declarations to individual branches/divisions.

This will involve:

- * HMRC setting up a specific field in CHIEF (Customs Handling of Import and Export Freight) in box 44 of the C88 (single administrative docu-

HMRC has identified a significant number of cases where the TURN-holder is a branch or division and therefore not entitled to an EORI number, as these are not legal entities

ment) declaration in which EOs will include a three-digit code to relate to the branch in question

- * new MSS (management support system) reports containing this specific information being made available to the EOs to enable reconciliation to be carried out, in particular against C79s (import VAT certificates)

- * in addition, a branch identifier could be included as part of the agent's reference in box 7 of the C88 which will appear on the C79.

Fuller details, including examples, of these solutions will be provided in the near future. EOs may choose not to use these solutions but instead adapt their own systems to meet their needs.

Other territories

I am an EO in the Isle of Man – can I apply for an EORI number? Yes – the same procedures detailed above will apply to Isle of Man EOs.

I am an EO in the Channel Islands – can I apply for an EORI number? Yes – you will need to send your EORI application to Jersey or Guernsey customs as appropriate, who will then liaise with the processing team in Cardiff.

Readers are invited to submit ideas for articles they would like to write - please email articles@theiit.org.uk