



# Weekly VAT News

Week to 6 July 2020

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Welcome to the latest edition of *EY VAT News*, which provides a roundup of indirect tax developments.

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If you would like to discuss any of the articles in more detail, please speak with your usual EY indirect tax contact, or one of the people below. If you have any feedback or comments on EY VAT News, please contact [Ian Pountney](#).

## EY Events

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Webcast - Are you ready for a VAT rate change? - 14 July 2020

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## COVID-19

EY Tax COVID-19 Stimulus Tracker - Stay up to date with COVID-19 stimulus responses

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HMRC statistics - VAT payments deferral scheme

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End of UK VAT payments deferral scheme

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Update - Revenue and Customs Brief 4 (2020): temporary VAT zero rating of personal protective equipment (PPE) - Extension to 31 October 2020

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Brexit

European Commission - Getting ready for the end of the transition period

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UK Government consultation on departure from retained EU case law by UK courts and tribunals

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Questionnaire for businesses which move goods between Great Britain and Northern Ireland

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Court of Justice of the European Union

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Judgment: The provision of cabinets and associated services for holding computer servers is not a supply of the 'leasing or letting of immovable property' or connected services

**C-215/19 Veronsaajien oikeudenvallontayksikkö**

This case is not available in English

On 2 July the Court of Justice of the European Union (CJEU) released its decision in this Finnish referral asking whether Article 13b and 31a of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for the VAT Directive as regards the place of supply of services, is to be interpreted as meaning that services, where a business provides its customers with cabinets in a centre for holding the customers' servers together with ancillary services, are to be regarded as the leasing or letting of immovable property?

If the first question is answered in the negative, are Article 47 of VAT Directive and Article 31a of the aforementioned Implementing Regulations nevertheless to be interpreted as meaning that a service of the type at issue in the main proceedings is to be regarded as a service connected with immovable property, the place of supply of which is the location of the property?

A Oy (the company) is a nationwide network operator for wireless telecommunications networks. The company's activity also includes the development of telecommunications networks and network infrastructure. It provides its customers, which are domestic and foreign operators in the IT sector, with 'computer centre services'. The company's customers use their own servers to provide data traffic connections. The servers are held in cabinets in the company's computer centres which are provided with the necessary data traffic connections and in which, inter alia, humidity and temperature are precisely regulated. The air-conditioned environment for the equipment held in the equipment cabinets is essential for the functioning of the customer's equipment.

The computer centre service offered by the company includes an equipment cabinet with a lockable door, electricity and the provision of the optimal environment for the use of the servers. This includes the monitoring of temperature and humidity in the server room, cooling, the monitoring of outages in the power supply, smoke alarms in the equipment cabinets for detecting possible equipment fires and electronic access control. The company also takes care of general cleaning and the replacement of lighting.

The equipment cabinets are situated in property leased by the company, in which the company has installed several equipment cabinets. The company's customers hold their own equipment in the equipment cabinets which is screwed to the cabinets and can be removed within a few minutes. The customers do not have their own key to their equipment cabinet; there is instead a 24-hour security service on the premises. On presentation of identification, a customer receives access; the company itself is not authorised to go into a customer's equipment cabinet.

There are separate agreements between the company and the customer for the rental of the equipment cabinet and for electricity, which is

charged for according to use. However, both are charged under one sum in the invoice without breakdown. As a separate service, the customer can purchase from the company equipment maintenance, such as resetting of the equipment or the connection of cables. For an additional charge, it is also possible to purchase from the company the installation of equipment.

In an advance ruling the tax authority considered the supply to be one of a service connected with immovable property, exempt from VAT and the place of supply being where the property is located. On appeal, the Administrative Court agreed with the company, holding that the services were not connected to immovable property; even though they were bolted to the floor, the equipment cabinets intended for the customers' servers could be moved without destroying or altering the building or construction. The equipment cabinets were not therefore immovable property within the meaning of Article 13b of the Implementing Regulation. The company sold its customers an overall service based on holding the customers' servers. Also, the computer centre service offered by the company was not to be regarded as a service connected with immovable property within the meaning of Article 31a.

The CJEU noted that the services offered by the company comprise several elements. It is necessary therefore to firstly consider whether there is a single supply or supply comprising several separate elements. In this regard the CJEU considered that whilst it is for the referring court to verify, in the immediate case the supply appears to be a single supply.

Moving on to the questions referred, the CJEU noted that it is appropriate to reformat the questions as the referral is limited to Article 13b and 31a of the Implementing Regulation; it is necessary to also consider Article 135 of the VAT Directive when determining the application of VAT exemption.

The CJEU considered that exemption for immovable property has to be interpreted strictly as exemptions are exceptions to the general principle that VAT is chargeable on supplies made by a taxable person, by way of business for consideration. The leasing of immovable property is usually a passive activity, the CJEU has previously held that exemption does not apply where the supply involves more than a passive involvement by the owner but also a number of commercial activities.

In the present case the company, as 'owner', provides several services to its customers to ensure optimal performance of the equipment held in the computer centres. Subject to review by the referring court, the company is involved in more than a mere passive activity granting a right of occupation. Also, following the provisions of the Implementing Regulation, the cabinets hosting the customers' equipment are not an integral part of the building in which they are installed nor are they permanently installed there.

Finally, The CJEU considered whether the services are to be regarded as 'connected with' immovable property, the place of supply of which is the location of the property. The CJEU noted that whilst it is for the referring court to verify, customers do not have the required exclusive right to use the property in which the cabinets are installed. They also have no right to control or restrict access to the part of the

property in question - the cabinet itself cannot be considered as 'immovable property' - the services, therefore, do not qualify as being connected with immovable property.

*Comments: Businesses making similar supplies, or those housing equipment at third party sites, should consider whether this judgment impacts current VAT accounting procedures. In the UK, in a number of circumstances, HMRC has sought to argue similar supplies as constituting a 'supply of land' so this could represent a possible change in treatment.*

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Judgment: In the absence of bad faith, an abuse of rights or fraud, a tax authority cannot prevent the correction of invoices and adjustment to VAT on the basis that the period in question has been subject to inspection and assessment

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Judgment: A single supply of management services to both special investment funds and other funds does not fall within the scope of the exemption

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Calendar update

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Court of Appeal



## Latest appeal update

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### First-tier Tribunal

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The letting on hire of a car with a child car seat is two separate supplies, with the seat chargeable to VAT at the reduced rate

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### HMRC Material

Open Consultation - Draft legislation: The Value Added Tax (Refund of Tax to the Charter Trustees for Bournemouth and the Charter Trustees for Poole) Order 2020

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Check if you can use Transit to move goods to the EU and Common Transit countries

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Pay no import duty and VAT on importing commercial samples

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European Commission

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Single Market Scoreboard 2020

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