Neutral Citation: [2026] UKFTT 00094 (TC)

Case Number: TC09749

FIRST-TIER TRIBUNAL
TAX CHAMBER

Sitting at Taylor House, London EC1

Appeal reference: TC/2022/01202

VALUE ADDED TAX – import VAT – entitlement to VAT credit – law as it applied prior to UK leaving EU - appellant contracted with biopharma company clients (mostly in US) to import trial drugs (for clinical trials), keep them in highly regulated conditions in appellant's UK depot, and deliver them to hospitals and clients (mostly outside the UK) on order by those hospitals/clinics – supplies of appellant's services to US clients were for fees but supplies of goods (trial drugs) to clinics and hospitals were for free – section 47(1) VAT Act 1994 (agents) considered – paragraphs 5 and 6 of Schedule 4 to VAT Act 1994 (dealing with meaning of 'supply' where no consideration given) considered – Held: that, in dealing with trial drugs, appellant was acting as agent (of its biopharma companies clients) in its own name – appellant's delivery of the trial drugs to EU countries (for no consideration) was a 'supply' under paragraph 6 of Schedule 4 – section 47(1) applied to appellant's dealings with those EU-destined goods, deeming there to be an import by the appellant as principal, and a supply by the appellant as principal – applying that deeming, VAT credit was due on import VAT for those EU-destined goods – but no VAT credit for import VAT on other goods (those destined for UK or non-EU countries) – appeal allowed in part

Heard on: 16-18 September 2025 with further written submissions on 8 and 17 December 2025

Judgment date: 14 January 2026

Before

TRIBUNAL JUDGE ZACHARY CITRON
TRIBUNAL MEMBER MANU DUGGAL JP

Between

YOURWAY TRANSPORT LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant:	Denis Edwards of counsel, instructed by Merali's, chartered accountants
For the Respondents:	Gareth McKinley, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

1. This appeal was about whether the Appellant could recover the import VAT it incurred on importing drugs and medicines ("**trial drugs**") used for clinical trials, something which the Appellant did as part of its business of handling the intricate logistics to enable its (mostly American) biopharma company clients (who produced the trial drugs) to get the trial drugs to the hospitals and clinics (mostly in Europe) where they were needed, in a safe, compliant, and timely manner.

2. References in what follows to

(1) "**sections**" (or "**s**") or "**Schedules**" are to sections, or Schedules, of the Value Added Tax Act 1994 (at the relevant point in time);

(2) "**Articles**" are to Articles of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax; and

"**input tax**" and "**VAT credit**" have the meanings given in s24 and s25 respectively.

3. Legislation referred to in this decision, where not set out in the body of the decision, is set out in the appendix.

FURTHER DETAILS ABOUT THIS APPEAL

4. The appeal was against the following decisions of HMRC:

(1) decision dated 2 October 2020 to reduce the amount claimed as a VAT credit in the Appellant's 7/20 VAT return by £455,985.14 (an appealable matter pursuant to s83(1)(c));

(2) decision dated 15 April 2021 to decline the Appellant's 'error correction notice' (claiming credit for overstated VAT) for periods 8/20 in the sum of £281,700.30 and 9/20 in the sum of £602,703.66 (an appealable matter pursuant to s83(1)(t));

(3) decision dated 4 May 2021 to issue VAT assessments for periods 9/19 to 6/20 in the sum of £2,989,566 (an appealable matter pursuant to s83(1)(p)(i)).

5. The total sum subject to the appeal was therefore £4,329,955.

6. On 19 November 2021, HMRC upheld the above decisions on statutory review. The Appellant appealed on 15 February 2022.

7. HMRC submitted an application for strike-out in March 2023; in submissions of counsel for the Appellant opposing that application, in May 2023, the Appellant put forward an argument that the Appellant was acting as an agent and that s47 applied. The proceedings were stayed for a period of time to enable the parties to explore that argument.

THE ISSUES IN THIS APPEAL

8. The principal issue in the appeal was whether the import VAT incurred by the Appellant, on importing the trial drugs, in VAT periods 9/19 to 9/20, was

(1) "input tax" (which, under s24(1), required that the trial drugs were goods *used or to be used for the purpose of any business carried on by the Appellant*), that was

(2) allowable under s26 (because *attributable to taxable supplies made by the Appellant in the course or furtherance of its business*),

such that the Appellant was entitled to a VAT credit for it.

9. If the answer to the above is "yes", the appeal falls to be allowed; if the answer is "no", then an alternative argument of the Appellant falls to be considered, namely, whether the

Tribunal should nevertheless allow the appeal because HMRC were required, as a matter of public law, to treat the Appellant as if it was entitled to a VAT credit for the import VAT it incurred, due to the Appellant having a "legitimate expectation" of such treatment at the hands of HMRC.

10. The parties presented their cases on the basis that, given that the appeal concerned periods prior to 'IP completion date', EU directives, and the decisions of the Court of Justice of the EU ("**CJEU**") cited to us (which pre-dated the IP completion date), were legally authoritative.

11. The burden of proof was on the Appellant and the standard of proof was the ordinary civil standard of the balance of probabilities.

The import VAT incurred by the Appellant

12. The Appellant's liability for the import VAT it incurred was not at issue in the appeal, but we asked the parties at the hearing to explain the background law, which we now understand to be as follows:

(1) VAT became chargeable under s1(c) (on the importation of goods into the UK) and was charged and payable "as if it were a duty of customs" (as the import was from places outside the member states: s1(4));

(2) under s15(2)(b), "the person who is to be treated for the purposes of this Act as importing any goods from a place outside the member States is the person who would be liable to discharge any such Community customs debt.";

(3) under the Customs and Excise Management Act 1979, s43(1), the importer was liable:

> Save as permitted by or under the customs and excise Acts or section 2(2) of the European Communities Act 1972 or any Community regulation or other instrument having the force of law, no imported goods shall be delivered or removed on importation until the importer has paid to the proper officer any excise duty chargeable thereon, and that duty shall, in the case of goods of which entry is made, be paid on making the entry.

(4) the value of the imported goods for VAT was governed by s21(1):

> For the purposes of this Act, the value of goods imported from a place outside the member States shall (subject to subsections (2) to (4) below) be determined according to the rules applicable in the case of EU customs duties, whether or not the goods in question are subject to any such duties.

THE EVIDENCE BEFORE THE TRIBUNAL

13. We had a 'hearing bundle' of 4,413 pages and a 'core bundle' of 482 pages. The contents of both broke down as follows:

(1) appeal documents (pleadings and applications and directions): 151 pages, reduced to 99 pages in the core bundle;

(2) appeal correspondence (2019-2024): 114 pages, reduced to 56 pages in the core bundle;

(3) VAT returns relating to the appeal: 15 pages, reduced to 1 page in the core bundle;

(4) Appellant's list of document: 1,402 pages, reduced to 158 pages in the core bundle;

(5) HMRC's list of documents: 2,704 pages, reduced to 78 pages in the core bundle;

(6) witness statement of HMRC officer Rachel Wills: 15 pages;

(7) witness statement of Maliha Jaffer (shareholder and company secretary in the Appellant, and involved in its operations): 10 pages.

(8) skeleton arguments (core bundle only): 50 pages.

14. Given the very large size of the hearing bundle, much of it, unsurprisingly, was not referred to by the parties in their written submissions or at the hearing. But we would note the following contents of the hearing bundle, which did attract some comment in submissions and at the hearing:

(1) 'master services agreement' (governed by New York law) between Yourway Transport, Inc (and its "affiliates") (as the 'contractor') and Regeneron Pharmaceuticals Inc (effective as of 20 September 2019);

(2) 'master services agreement (for packaging, labelling and distribution)' (governed by Pennsylvania law) between Yourway Transport Inc and Arbutus Biopharma Corporation (core bundle, page 368); this

(a) stated that Arbutus shall own and continue to own all right, title and interest in and to all Arbutus material; Arbutus material was defined as any material to be supplied by or on behalf of Arbutus to the contractor for use in the service set out in each 'statement of work';

(b) included clause 13.10, stating that the parties were each independent contractors and that the relationship between them "shall not constitute a partnership, joint venture, agency or any kind of fiduciary relationship"; it said that neither party had the authority to "make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other party, without the prior consent of the other party to do so";

(3) 'work order' issued under the master services agreement with Regeneron Pharmaceuticals Inc; this included

(a) "study/project information", including a "study number"; the work order effective date and end date (in this case, the end date fell nearly three years after the effective date);

(b) an attachment setting out "study specifications", such as

(i) "project information" (the trial drugs involved, the temperature for storage of the drugs, the estimated number of "sites" (here, 36), the estimated number of patients (here, 36), the countries (here, Finland and Poland), the duration of the study (here, 36 months); and that "distribution orders" would be generated by IRT;

(ii) "assumptions" (that there would be 5 total receipts of each type of bulk drug shipped to Yourway depots; 1 shipment per site every other month; approximately 558 IP site shipments; 108 total IP returns and 1 destruction per depot per year);

(4) instructions from other clients of the Appellant, to undertake specialist logistical services in relation to clinical trials;

(5) invoices from the Appellant to its biopharma company clients;

(6) evidence of payment being received from clients;

(7) a redacted commercial invoice with name of the 'shipper' showing the Appellant as consignee/importer and delivery to a named research institute in Harley Street, London;

(8) 'quality technical agreement (for the storage, repackaging and release of investigational pharmaceutical products, the provision of QP [qualified person – a regulatory term] services for other related services)' between the Appellant and its US affiliate, Yourway Transport Biopharma Services (signed on 16 November 2020):

(a) the scope clause stated that the agreement defined the roles and responsibilities relating to the QP release, storage, repackaging, relabelling, delivery of product for Yourway Transport Biopharma Services customers or suppliers and other QP services (fulfilling the requirements of certain regulations relating to good distribution practice);

(b) there were clauses dealing with premises, change control, temperature control, storage/delivery, sub-contracting, auditing, recalls & returns, procedures (amongst other things);

(c) there was a schedule allocating "responsibilities" (with regard to Yourway Transport Biopharma Services products) as between the Appellant and its US affiliate;

(9) 'quality technical agreement' (for the provision of IT services related to the storage, distribution and provision of GMP [Good Manufacturing Practice] related services) between the Appellant and its US affiliate, Yourway Transport Biopharma Services (signed in April and May 2021);

(10) 'quality agreement' between the Appellant and its US affiliate, Yourway Transport Biopharma Services Inc, issued in 2014, constituting the quality agreement required under an EU regulation (includes a table allocating responsibilities as between the Appellant and its US affiliate);

(11) 'certificates of release' signed by a Qualified Person on behalf of the Appellant, certifying that information about a drug product was accurate; that a batch complied with the requirements of a EU directive; that a lot of product had been manufactured, labelled and packaged compliantly; and releasing the lot of product for clinical trial use;

(12) 'batch release procedure form' of the Appellant's;

(13) MHRA [Medicines & Healthcare products Regulatory Agency] 'certificate of GMP compliance of a manufacturer' issued to the Appellant (dated 2021) and stating that the Appellant had been inspected and complied with the principles and guidelines of Good Manufacturing Practice laid down in the relevant regulation;

(14) MHRA 'manufacturer's 'specials' licence' issued to the Appellant;

(15) MHRA 'wholesale distribution authorisation (human)' issued to the Appellant, authorising distribution by way of medicinal products for human use;

(16) MHRA 'manufacturer's authorisation – investigational medicinal products', issued to the Appellant, authorising manufacture, assemble and/or import of investigational medicinal products for human use in accordance with clinical trials regulations;

(17) witness statement of Ms Jaffer, who also gave oral evidence at the hearing, and was cross examined; the subject matter of her evidence, was, broadly, the Appellant's business. Ms Jaffer was, in our view, a credible and reliable witness; and so our

findings of fact about the Appellant, from a business and commercial point of view, which follow, largely reflect her evidence;

(18) witness statement of Officer Wills, who also gave oral evidence at the hearing, and was cross examined; Officer Wills became involved in matters related to this appeal in September 2020; her witness statement concerned her involvement in HMRC's enquiries into those matters. Whilst we also found Officer Wills to be a perfectly credible witness as to factual matters of which she had first hand knowledge, we found her oral evidence on such matters of little assistance, as she was not herself involved in the Appellant's business, and only became involved in the Appellant's VAT affairs in September 2020 i.e. after any relevant 'legitimate expectation' on the part of the Appellant could have been formed. Her opinions on the legal questions before the Tribunal, whether held at the time of the enquiries performed by HMRC in which she participated, or at the time of the hearing, carried no evidential weight.

THE PARTIES' SUBMISSIONS

15. We have been greatly assisted by the written and oral submissions of both parties, including those provided after the hearing, at our request, specifically on the application of paragraphs 5 and 6 of Schedule 4 (supplies for no consideration). Whilst we have not sought to reproduce or summarise all of those submissions in this decision, what we have sought to do is explain why we have not accepted a party's line of argument, where our doing so has had a material effect on the decision we have made.

OUR FINDINGS OF FACT

The Appellant's business

16. The Appellant's business was providing the logistics to enable its clients, mostly US biopharma companies, to deliver trial drugs (manufactured by the biopharma companies) for clinical trials undertaken by clinics and hospitals outside the US (largely in Europe). The Appellant did this by operating a depot for the trial drugs in the UK, where they were kept under strictly controlled conditions (including in relation to temperature control) to ensure safety and conform to regulatory requirements of the UK regulator, the Medicines & Healthcare products Regulatory Agency; the Appellant's biopharma company clients would send the trial drugs to the Appellant; the Appellant would take care of all UK import formalities, including by being the importer of record; clinics and hospitals (mostly in Europe) operating clinical trials would then place orders with the Appellant, via a software platform known as IRT, requesting delivery of particular trial drugs. The Appellant would then pick, pack and deliver the ordered trial drug, which would usually involve exporting it out of the UK, as most of the clinics and hospitals involved were outside the UK.

17. The Appellant, in sum, provided a 'one stop shop' for its (largely US) biopharma company clients with regard to getting their trial drugs delivered to the clinics and hospitals (outside the US) which needed them, in a safe, compliant and timely manner.

18. The trial drugs were provided to clinics and hospitals undertaking clinical trials free of charge; the Appellant was paid for its services by its biopharma company clients.

19. Throughout the time that the Appellant held the trial drugs, it did not own them – ownership remained with the biopharma companies, until the trial drugs were delivered (by the Appellant) to the clinics and hospitals (at which point, the trial drugs belonged to them). In other words, the Appellant held the trial drugs on behalf of the biopharma companies, prior to delivery to the end user clinics and hospitals.

20. The Appellant imported the trial drugs into the UK, and exported them out of the UK, in its own name.

21. The Appellant was a family-owned business: the other shareholder in the Appellant, apart from Ms Jaffer, was her brother. The Appellant had affiliated companies in the US, under common family ownership, with which it worked in close cooperation (serving the same biopharma company clients).

22. Of its 15 biopharma company clients at relevant times, all but two were in the USA: one was in Canada, and one in Switzerland. None of these client companies was UK VAT registered. The Appellant was UK VAT registered.

23. The standard process was that trial drugs were sent to the Appellant, for storage at its UK depot, by its biopharma company clients (directly, or via a US affiliate of the Appellant), in bulk. The Appellant ensured that the trial drugs were transported to, and held in, its UK depot, under strictly controlled conditions. The trial drugs could be held in the depot for some time, pending an order coming through (on IRT) from a clinic or hospital for delivery to them.

24. Interactive Response Technology, or "IRT", was a software platform, used and run by clinics and hospitals undertaking clinical trials, and the biopharma companies producing the trial drugs, by which those running clinical trials could order delivery of specific trial drugs by the Appellant. The Appellant then took care of the logistics of getting the trial drugs to the clinics (without further reference to the biopharma companies).

25. The clinical trials involving trial drugs were "blind" in the sense that the biopharma companies did not have any information identifying individuals involved in the trials. IRT facilitated this by having orders for trial drugs made by clinics and hospital directly to the Appellant (with no involvement by the biopharma companies in placing, and acting on, that order).

26. The contractual documentation between the Appellant and its biopharma company clients was 'master service agreements' governed by US law, supplemented by 'statements of work' which addressed a particular clinical trial and the drugs involved. The legal documentation did not address the question of how and when ownership of (or 'legal title' to) the trial drugs passed to the clinics and hospitals conducting the clinical trials (including whether the Appellant acted as agent of the biopharma companies in that conveyance).

27. There was no contractual documentation as between the Appellant and the clinics and hospitals to which it delivered the trial drugs (apart from orders made via IRT).

HMRC briefs 2/19 and 15/20

28. HMRC brief 2/19 (*VAT – import VAT deducted as input tax by non-owners*), issued on 11 April 2019, stated that it explained "the correct treatment for the deduction of import VAT paid by a taxable person who is not the owner of the relevant goods".

29. Under the sub-heading "toll operators", the brief stated that

> (1) 'toll operators' all operated a "similar business model, they import goods (for example pharmaceutical goods), process them and distribute them within the UK for clinical trials;
>
> (2) the 'toll operator' neither took ownership of the goods nor resold them; they may, however, distribute the goods onwards at the instruction of the owner (their customer); "the only supply by the toll operator is of its services to its client (the owner of the imported goods)";
>
> (3) the "correct procedure" was "for the owner to be the importer of record and reclaim the import VAT, either in accordance with [s24] (if registered for VAT in the UK) or under the Thirteenth VAT Directive".

30. Under the sub-heading "action needed", the brief stated that from 15 July 2019 HMRC would only allow claims for input tax deduction made using the "correct procedures". It also said this:

> HMRC accepts that as previous guidance was not clear on the correct procedure, businesses in these situations have been acting in good faith. HMRC will not pursue historical VAT deduction where the VAT could have been recovered in full by the owner of the goods at the time of importation as long as there is no risk of duplicated claims. In this context 'historical' means deductions made before 15 July 2019.

31. HMRC brief 15/20 (*VAT – conclusion of review of import VAT deducted as input tax by non-owners*) stated that the policy in brief 2/19 had been "reviewed" and stated that it remained "correct".

The Appellant's relevant interactions with HMRC, prior to the first of the decisions under appeal

32. There was an exchange of emails between Ms Jaffer and HMRC officer Joe Webb on 12 August 2019 in which Officer Webb thanked Ms Jaffer for her call earlier in the afternoon and asked to see certain information/documents in respect of the Appellant's claim for VAT period 6/19; it appears that Ms Jaffer provided this on the same day.

33. On 19 and 20 November 2019 HMRC conducted a "check of VAT records" visit to the Appellant.

34. There was no agreement between HMRC and the Appellant (either prior to, or during the course of, the transactions involved in the decisions of HMRC at issue in this appeal) as to the correctness of the Appellant's VAT returns which showed the import VAT on its importation of trial drugs as being entitled to a VAT credit. The most that can be said is that, prior to the first of the decisions of HMRC in this appeal, HMRC did not exercise any powers they had to amend the position shown in the Appellant's VAT returns; nor did they use any powers to refrain from making any VAT input tax repayments consequent on the position as set out in the Appellant's VAT returns.

DISCUSSION

35. It seems to us – and we understood the parties to be agreed on this point – that the principal issue in this appeal, as set out at [8] above, may turn on whether or not s47(1) applies in the circumstances of this case. We therefore start our analysis with that question.

Does s47(1) apply?

36. Sub-section 47(1) is a 'deeming' provision (i.e. it calls for the law to be applied "as if" certain things were the case, even if, in fact, they are not); and so has the following two elements:

(1) the conditions to be satisfied for the deeming to take effect; and

(2) what exactly is deemed to take effect.

37. The relevant conditions (applying s47(1)(b)) are that

(1) goods are imported from a place outside the member States by a taxable person;

(2) the taxable person then supplies those goods as agent for a person who is not a taxable person; and

(3) the taxable person acts in relation to the supply in his own name.

38. The effect of the deeming (in a case like this) is that the goods are treated as imported and supplied by the taxable person as principal.

39. In considering the effect of the 'deeming' in s47(1), we bear in mind relevant guidance in *Fowler v HMRC* 2020 UKSC 22 at [27], including that

(1) the extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears;

(2) for that purpose the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes; and

(3) the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real.

40. Looking at the conditions for s47(1)(b) to apply, there is no question but that goods (the trial drugs) were imported from places outside the member States by a taxable person, namely, the Appellant; and that the biopharma companies (who owned the trial drugs) were not taxable persons. The important questions, as to whether s47(1)(b) applies in this case, are therefore:

(1) did the Appellant supply the trial drugs as agent for the biopharma companies; and if so

(2) did the Appellant act, in relation to that supply (as agent), in its own name?

41. Before looking at these questions in detail, we observe that there were two contested issues in which we are in broad agreement with the Appellant:

(1) first, ownership of the goods in question by the person acting as an agent, is no part of the conditions for s47(1) to apply; and

(2) second, and based on the facts of this case as we have found them, we (further) find that, in effecting delivery of the trial drugs (and, in so doing, transferring their ownership) to the clinics and hospitals, the Appellant was acting as the agent of its biopharma company clients, the owners; and, in doing so, the Appellant was acting in its own name, not in that of the biopharma companies. Granted, there was no express provision in the documentation between the Appellant and the biopharma companies to that effect; but, in our view, that state of affairs can be inferred from all the circumstances, viewed realistically. The specialist and strictly regulated nature of handling these particular goods (keeping them in very specific conditions as regards temperature, etc), and the need to do it quickly in response to the needs of those running clinical trials, meant that the Appellant's 'offering' to the biopharma companies only 'worked', commercially (and safely, in compliance with medical regulation), if the Appellant was acting as the biopharma companies' agent in effecting delivery (and so transferring ownership) of the trial drugs. We note in particular:

(a) orders for the trial drugs came directly to the Appellant from the clinics and hospitals that needed them, via IRT – the biopharma companies, who owned the goods, were not involved;

(b) the Appellant held the goods (the trial drugs) in bulk quantities, and in strictly controlled conditions, in its depot, over extended periods of time, reflecting the fact that clinical trials lasted over a period of time – the biopharma companies were, again, not involved in the (important and stringent) details of how the trial drugs, which they owned, were kept over this extended period of time;

(c) the pick and pack process – again conducted under strictly controlled conditions – was undertaken solely by the Appellant – the biopharma companies, once again, were not involved.

In other words, in our view, there was implicit authority, arising from the arrangements, that the Appellant was acting on behalf of the biopharma company owners of the trial drugs, when it came to their being transferred to clinics and hospitals for clinical trials.

42. Returning to the conditions for s47(1) to apply, the Appellant must have *supplied* the trial drugs as agent acting in its own name. Section 5 defines 'supply' – and excludes anything done "otherwise than for a consideration", unless expressly provided to be such by Schedule 4 (or Treasury orders). These domestic provisions are derived from Articles 2.1 (as regards the general requirement for consideration) and 14.1 (as regards the meaning of supply of goods). (The Appellant cited *Evita* (CJEU Case C-78/12) at [35-36], which says that 'supply of goods' under Article 14 extends to transactions whereby a taxable person makes a transfer of tangible property authorising the other party to hold that property de facto as if it were the owner – however, this does not detract from the general requirement for consideration under Article 2.1).

43. Given that the imported trial drugs were provided to the clinics and hospital for free, the relevant provisions, as regards whether the Appellant supplied the goods as agent, are paragraphs 5 and 6 of Schedule 4 (derived from Articles 16 and 17, respectively). We shall look at paragraphs 5 and 6 in order, as paragraph 6 applies only if paragraph 5(1) does not.

44. Paragraph 5(1) provides that

> where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, that is a supply by him of goods.

45. (For completeness, we note that paragraph 5(1) does not apply where the transfer is "the provision to a person, otherwise than for a consideration, of a sample of goods" (paragraph 5(2)(b)). In our view, the trial drugs provided to the clinics and hospitals, for free, were (quite clearly) not a "sample"; they were part of an intricate, highly regulated, clinical trial arrangement for trial drugs.)

46. Paragraph 5(5) then provides that paragraph 5(1) does not require anything which a person carrying on a business does otherwise than for a consideration in relation to any goods to be treated as a supply except in a case where that person

> is a person who (disregarding this paragraph) has or will become entitled—
>
> (a) under sections 25 and 26, to credit for the whole or any part of the VAT on the supply, acquisition or importation of those goods or of anything comprised in them; or
>
> (b) ….

47. Our task is to interpolate the concept of someone 'supplying as agent in its own name' into these definitions of 'supply' (where there is no consideration). We note that the Tribunal (Judge Hellier) in *Scanwell Logistics (UK) Ltd v HMRC* [2021] UKFTT 261 (TC) considered some of the terminology in s47 – but, as the facts of that case involved a supply of goods *for consideration*, it considered s47 in the context of supply of goods in the sense of conveyance of legal title ("transfer of the whole property in goods" - paragraph 1 of Schedule 4), rather than 'supply' in its paragraphs 5 or 6 sense – and so is of limited assistance here.

48. Construing paragraph 5(1), what happened here, on a realistic view of the facts, was that the Appellant, as agent of the biopharma companies but acting in its own name, transferred goods that belonged, legally, to the biopharma companies (and so assets of their businesses), to someone else, namely, the clinics/hospitals. It thus seem to us that paragraph 5(1) is satisfied on a realistic view of the fact of this case. Approaching paragraph 5(5) in a consistent manner, the question is whether the Appellant, as the biopharma companies' agent, but acting in its own name, had or would become entitled to VAT credit for the import VAT on the trial drugs. At first glance, there is an element of "chicken and egg" in the question posed by paragraph 5(5), given that the Appellant's entitlement to VAT credit for import VAT is itself the principal issue in this appeal; however, on closer inspection, that potential circularity is resolved by the words, "disregarding this paragraph"; and the effect of these words is that, logically, the Appellant cannot rely on a supply which meets the requirements of paragraph 5 as a "route" to success in this appeal based on the deeming effect of s47(1), as, to come within paragraph 5, the Appellant would have to show it would have won the appeal even if paragraph 5 were disregarded.

49. We must, therefore, turn to the meaning of 'supply' within paragraph 6. For much the same reasons as we consider that paragraph 5(1) is satisfied, so, in our view, is paragraph 6(1), where the trial drugs were sent to clinics and hospitals in EU countries other than the UK: the Appellant, acting as agent of the biopharma companies, but acting in its own name, removed trial drugs in those cases from the UK to other EU countries; this was in the course or furtherance of the biopharma companies' businesses; and was for the purpose of taking the trial drugs to a place other than that from which they were removed.

50. In respect of trial drugs removed to other EU countries, therefore, we answer both the 'important' questions as regards the conditions for s47(1) to apply, as set out in [40] above, in the affirmative. This means that s47(1) applies in those cases.

The effect of s47(1) applying

51. The effect of this is that those EU-destined trial drugs fall to be treated as imported and supplied by the Appellant as principal. It is that 'deemed' reality to which the well-known principles for recovery of input tax fall to applied. The relevant domestic law provisions (s24 and s26) are derived (as regards credit for import VAT) from Article 168(e); in addition, a number of cases that were cited to us (with key phrases cited in argument, particularly by HMRC, shown in italics in what follows):

(1) *BLP Group plc* Case C-4/94 (CJEU) at [19]:

> Paragraph 5 [of Article 17] lays down the rules applicable to the right to deduct VAT where the VAT relates to goods or services used by the taxable person 'both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible'. The use in that provision of the words 'for transactions' shows that to give the right to deduct under paragraph 2, the goods or services in question must have a *direct and immediate link* with the taxable transactions, and that the ultimate aim pursued by the taxable person is irrelevant in this respect.

(2) *Midland Bank plc* Case C-98/98) at [30]:

> It follows from that principle as well as from the rule enshrined in paragraph 19 of the judgment in *BLP Group*, cited above, according to which, in order to give rise to the right to deduct, the goods or services acquired must have a *direct and immediate link* with the taxable transactions, that the right to deduct the VAT charged on such goods or services presupposes that the expenditure incurred in obtaining them was

> *part of the cost components of the taxable transactions*. Such expenditure must therefore be part of the costs of the output transactions which utilise the goods and services acquired. That is why those cost components must generally have arisen before the taxable person carried out the taxable transactions to which they relate.

(3) In *Weindel* (CJEU Case C-621/19), a taxpayer whose business was 'repackaging services', imported goods into Slovakia from abroad for repackaging; its release of the goods under the free circulation procedure incurred a tax liability; the repackaging service was invoiced to the foreign owner of the goods. It was held that Article 168(e) must be interpreted as precluding the granting of a right of deduction of VAT to an importer *where he does not have the goods in his possession as owner* and *where the input import costs do not exist or are not included in the price of specific output transactions or in the price of goods and services supplied or supplied by a taxable person in the course of his economic activity*;

(4) In *Piramal Healthcare UK Ltd v HMRC* [2024] SFTD 337, a decision of this Tribunal (Judge Vos and Mr Robertson), the taxpayer, a UK pharma company, imported 'pharmaceutical ingredients' and paid import VAT; the supplier of the ingredients did not charge for the supply of them, and remained the owner of them; once received, the taxpayer carried out work on the ingredients and/or research and testing; the taxpayer charged its customers for its services; the goods were then sent back to the customer, sent to third parties for further processing or sent to clinics for use in clinical trials; the taxpayer did not make any onward supply of goods representing or containing the pharmaceutical ingredients. The Tribunal held that the import VAT the taxpayer incurred was not available as an input tax credit as the goods imported, whilst being used in relation to its business, *were not used as a cost component in any onward taxable supply made by the taxpayer, because it did not own those goods*.

52. It will be noted that none of these cases dealt with situations of agents making supplies in their own names. In our view, this is an important difference when considering, in particular, the latter two cases, where the question of whether the importer *owned* the goods was given especial significance. In our case, given the 'deemed' reality, the Appellant imported the EU-destined trial drugs *as principal* and supplied them *as principal* – a principal, in the context of an agency over goods, is the person who owns them, and so it seems to us that any requirement of 'ownership' is satisfied in this case as regards the EU-destined trial drugs. This seems to us in keeping with the purpose of the deeming 'fiction' in s47: to treat the agent, for VAT purposes, as the principal would be treated, in situations covered by the provision where the agent is acting in its own name.

53. As regards the "direct and immediate link" between the import VAT (on EU-destined trial drugs) and the Appellant's (deemed) supply of those trial drugs as principal (which is not an exempt supply, and so, per s4(2), is a taxable supply), this requirement seems to us quite clearly satisfied. We are fortified in this conclusion by what the Supreme Court recently said about this and the "cost component" references in the case law, in *HMRC v Hotel La Tour* [2025] UKSC 46:

> 12. The test that has developed in the case law of the CJEU states that input VAT is deductible if it is "directly and immediately linked to" a taxable output supply. Much of the focus of the submissions in this appeal was on divining precisely what that test means both generally and in the circumstances of this case. In *Midland Bank plc v Customs and Excise Comrs* (Case C-98/98) [2000] 1 WLR 2080 ("Midland Bank"), Advocate General Saggio said that: (para 29)

> "… The meaning of the key legal expression 'direct and immediate link' is to be found in the words that go to make it up and in the principles developed by the court concerning the way in which the VAT deduction system is to be implemented."

13. However, one thing is clear from the case law. In order for an input to be "directly and immediately linked" to an output, the link does not necessarily have to be what one might think of as "direct" in the sense of more closely linked to that transaction than to any other. Nor does it have to be "immediate" in the sense of being incurred close in time to the making of the output supply. Imperfect though the formulation of the test may be, that is the test which the taxing authority must apply, following such guidance as the CJEU has given over the years. The CJEU has, however, been hesitant about laying down any hard and fast rules and has consistently stated that it is for the national courts to apply the test. In Midland Bank the CJEU noted that all the parties agreed that it was not realistic "to attempt to be more specific" about the nature of the test:

> "25. … In view of the diversity of commercial and professional transactions, it is impossible to give a more appropriate reply as to the method of determining in every case the necessary relationship which must exist between the input and output transactions in order for input VAT to become deductible. It is for the national courts to apply the 'direct and immediate link' test to the facts of each case before them and to take account of all the circumstances surrounding the transactions at issue."

14. Other legislative wording describes the link in different terms. Article 1(2) of the PVD states that the VAT payable is calculated on the price of the goods or services "after deduction of the amount of VAT borne directly by the various cost components". This description of inputs as "cost components" or "components of the price" of the output is often used in the case law: see for example *Investrand* [*BV v Staatssecretaris van Financiën (Case C-435/05)*] in para 24 … . This wording has given rise to problems and it is common ground that this description of the inputs test caused the First-tier Tribunal in this case to fall into error. The phrase is unhelpful in so far as it suggests that input tax can only be directly and immediately linked to a specific supply transaction if the price of that output supply was calculated on a "cost plus" basis so that it is possible to identify the cost of the input in the calculation of the price for the output.

54. It thus seems to us that the import VAT incurred by the Appellant on import of EU-destined trial drugs falls, in the particular circumstances of this case, to be afforded a VAT credit; and, to that extent, the appeal succeeds.

The position as regards import VAT on trial drugs not destined for other EU countries

55. Per the foregoing analysis, the 'deeming' effect of s47(1) does not apply to trial drugs that either remained in the UK, or were exported to countries outside the EU. In these cases, we have considered

(1) whether the deeming effect of s47(2A) would assist the Appellant's case on the principal issue in this appeal; and

(2) whether the import VAT is deductible on first principles (as outlined at [51] and [53] above).

56. Section 47(2A) requires there to be a *supply of goods* to which s47(1) does not apply – however, per our analysis above, there was no "supply", for VAT purposes, of the trial drugs

that were not destined for the EU, as there was no consideration for the transactions, paragraph 5 of Schedule 4 cannot logically assist a case for deductibility of such import VAT (see [48] above), and paragraph 6 of Schedule 4 does not apply. It follows that s47(2A) cannot assist the Appellant's case on the principal issue in this appeal.

57. As to first principles, it seems to us that import VAT on trial drugs that were not destined for other EU countries, cannot be directly and immediately linked to the Appellant's taxable supplies, as those supplies were (a) supplies of services (as opposed to goods) to the biopharma companies, their clients, and (b) supplies of trial drugs destined for the EU (i.e. not the trial drugs that were to remain in the UK or go to non-EU countries). In other words, those supplies did not involve the non-EU destined trial goods at all.

Alternative argument of the Appellant based on proposition that the Appellant, in fact, owned the goods

58. The Appellant had an alternative argument based on an alternative view of the facts whereby the Appellant, in fact, took ownership of the goods; this view of the facts ran contrary to the Appellant's own evidence – and, indeed, is contrary to the facts as we have found them. We accordingly reject this alternative argument.

Alternative argument of the Appellant based on 'legitimate expectation'

59. The Appellant's argument was that HMRC, by

> (1) not using their powers to correct VAT returns and claims by the Appellant (prior to those in the decisions being appealed) to the effect that import VAT incurred by the Appellant on imports of trial drugs (in circumstances similar to those in the decisions being appealed) was entitled to a VAT credit, and
>
> (2) after their interactions with the Appellant in August and November 2019 (see findings of fact at [32] and [33] above) (which followed publication of HMRC brief 2/19 – see findings of fact at [28-30] above), not informing the Appellant (prior to the making of the decisions being appealed) that import VAT on its imports of trial drugs did not carry entitlement to a VAT credit,

had created a legitimate expectation for the Appellant that import VAT on its imports of trial drugs *did* carry entitlement to a VAT credit, such that, on public law principles, HMRC's decisions to the contrary (in the decisions being appealed) were unlawful.

60. It seems to us that even if we had the power to allow an appeal on the public law grounds the Appellant relies on, those public law grounds are not made out, on the facts of this case. We say that on the authority of *R (Veolia ES Landfill Ltd) v HMRC* [2016] EWHC 1880 (Admin), where the administrative court (Nugee J) found the following four propositions to be justified by *R (MFK Underwriting Agents Ltd) v IRC* [1989] STC 873 and *R (Davies) v HMRC* [2012] 1 All ER 1048:

> (1) HMRC may create a legitimate expectation that a person's tax affairs will be treated in a particular way either by the promulgation of general guidance to a body of taxpayers or by a specific statement or ruling given to a taxpayer.
>
> (2) A legitimate expectation will only arise if the guidance or the specific statement is clear, unambiguous and devoid of any relevant qualification.
>
> (3) If a taxpayer approaches HMRC for a ruling, he has an obligation to place all his cards face up on the table, in the sense of giving full details of the transaction on which he seeks the revenue's decision.

(4) Provided there was a clear and unambiguous statement, and provided the taxpayer has placed all his cards face up on the table, he will generally be entitled to rely on an assurance given to him as binding on HMRC. A similar entitlement arises in relation to guidance issued by HMRC.

61. (For completeness, we note that counsel for the Appellant suggested at the hearing that the guidance in *Veolia* just cited was qualified by what was said by Lord Mance in *R (Bancoult) v SSFCA* [2008] UKHL 61 at [177]; we are not persuaded, as that paragraph deals with the possible outcomes "where a member of the public has, as a result of a promise or other conduct, a legitimate expectation that he or she would be treated in one way and the public body wishes now to treat him or her in a different way" – it is not dealing with the prior question (with which Nugee J was dealing in the extract above, in the context of HMRC's conduct) of what it is about the "promise or other conduct" that gives the member of the public the legitimate expectation.)

62. Applying Nugee J's four propositions, and given our findings of fact at [34] above, it is clear that no legitimate expectation was created by HMRC in this case, in relation to the import VAT incurred by the Appellant carrying entitlement to a VAT credit: there was no general guidance to that effect (HMRC brief 2/19 was to the opposite effect), nor was any specific statement or ruling given to the Appellant in that regard.

63. In the circumstances, it is unnecessary for us to ponder the prior question of whether the Tribunal has any power to allow this appeal on the basis of this public principle (a difficult question on which the parties took opposing views).

CONCLUSION

64. The appeal is allowed with respect to import VAT on trial drugs which were sent by the Appellant to other EU countries. The appeal is dismissed with respect to other import VAT. We expect the parties to be able to agree the quantum of import VAT that is allowable, based on this conclusion; if and to the extent they cannot, they may apply to the Tribunal for a determination.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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

Release date: 14th JANUARY 2026

APPENDIX
(LEGISLATIVE PROVISIONS REFERRED TO)

SECTION 4

(1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.

SECTION 5

(1) Schedule 4 shall apply for determining what is, or is to be treated as, a supply of goods or a supply of services.

(2) Subject to any provision made by that Schedule and to Treasury orders under subsections (3) to (6) below—

(a) "supply" in this Act includes all forms of supply, but not anything done otherwise than for a consideration;

(b) anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.

…

SECTION 24

(1) Subject to the following provisions of this section, "input tax" , in relation to a taxable person, means the following tax, that is to say—

(a) VAT on the supply to him of any goods or services;

(b) VAT on the acquisition by him from another member State of any goods; and

(c) VAT paid or payable by him on the importation of any goods from a place outside the member States,

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

….

SECTION 25

(1) A taxable person shall—

(a) in respect of supplies made by him, and

(b) in respect of the acquisition by him from other member States of any goods,

account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

(3) If either no output tax is due at the end of the period, or the amount of the credit exceeds that of the output tax then, subject to subsections (4) and (5) below, the amount of the credit or, as the case may be, the amount of the excess shall be paid to the taxable person by the Commissioners; and an amount which is due under this subsection is referred to in this Act as a "*VAT credit*".

….

SECTION 26

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

(a) taxable supplies;

(b) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom;

(c) such other supplies outside the United Kingdom and such exempt supplies as the Treasury may by order specify for the purposes of this subsection.

…

SECTION 47

(1) Where—

(*a*) goods are acquired from another member State by a person who is not a taxable person and a taxable person acts in relation to the acquisition, and then supplies the goods as agent for the person by whom they are so acquired; or

(*b*) goods are imported from a place outside the member States by a taxable person who supplies them as agent for a person who is not a taxable person,

then, if the taxable person acts in relation to the supply in his own name, the goods shall be treated for the purposes of this Act as acquired and supplied or, as the case may be, imported and supplied by the taxable person as principal.

(2) For the purposes of subsection (1) above a person who is not resident in the United Kingdom and whose place or principal place of business is outside the United Kingdom may be treated as not being a taxable person if as a result he will not be required to be registered under this Act.

(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent.

(3) Where services, other than electronically supplied services and telecommunication services, are supplied through an agent who acts in his own name the Commissioners may, if they think fit, treat the supply both as a supply to the agent and as a supply by the agent.

(4) Where electronically supplied services or telecommunication services are supplied through an agent, the supply is to be treated both as a supply to the agent and as a supply by the agent.

(5) For the purposes of subsection (4) "agent" means a person ("A") who acts in A's own name but on behalf of another person within the meaning of Article 28 of Council Directive 2006/112/EC on the common system of value added tax.

(6) In this section "electronically supplied services" and "telecommunication services" have the same meaning as in Schedule 4A (see paragraph 9(3) and (4) and paragraph 9E(2) of that Schedule).

SECTION 83(1)

Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—

…

(c) the amount of any input tax which may be credited to a person;

…

(p) an assessment—

(i) under section 73(1) or (2) in respect of a period for which the Appellant has made a return under this Act; or

(ii) under subsections (7), (7A) or (7B) of that section; or

(iii) under section 75;

or the amount of such an assessment;

…

(t) a claim for the crediting or repayment of an amount under section 80, an assessment under subsection (4A) of that section or the amount of such an assessment;

…

PARAGRAPH 1 OF SCHEDULE 4

(1) Any transfer of the whole property in goods is a supply of goods; but, subject to sub-paragraph (2) below, the transfer—

(a) of any undivided share of the property, or

(b) of the possession of goods,

is a supply of services.

(2) If the possession of goods is transferred—

(a) under an agreement for the sale of the goods, or

(b) under agreements which expressly contemplate that the property also will pass at some time in the future (determined by, or ascertainable from, the agreements but in any case not later than when the goods are fully paid for),

it is then in either case a supply of the goods.

PARAGRAPH 5 OF SCHEDULE 4

(1) Subject to sub-paragraph (2) below, where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, that is a supply by him of goods.

(2) Sub-paragraph (1) above does not apply where the transfer or disposal is—

(*a*) a business gift the cost of which, together with the cost of any other business gifts made to the same person in the same year, was not more than £50;

(*b*) the provision to a person, otherwise than for a consideration, of a sample of goods.

(2ZA) In sub-paragraph (2) above—

"business gift" means a gift of goods that is made in the course or furtherance of the business in question;

"cost", in relation to a gift of goods, means the cost to the donor of acquiring or, as the case may be, producing the goods;

"the same year", in relation to a gift, means any period of twelve months that includes the day on which the gift is made.][7]

(2A) For the purposes of determining the cost to the donor of acquiring or producing goods of which he has made a gift, where—

(*a*) the acquisition by the donor of the goods, or anything comprised in the goods, was by means of a transfer of a business, or a part of a business, as a going concern,

(*b*) the assets transferred by that transfer included those goods or that thing, and

(*c*) the transfer of those assets is one falling by virtue of an order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services,

the donor and his predecessor or, as the case may be, all of his predecessors shall be treated as if they were the same person.][4]

(3) …

(4) Where by or under the directions of a person carrying on a business goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other

than a purpose of the business, whether or not for a consideration, that is a supply of services.

(4A) Sub-paragraph (4) does not apply (despite paragraph 9(1)) to—

(*a*) any interest in land,

(*b*) any building or part of a building,

(*c*) any civil engineering work or part of such a work,

(*d*) any goods incorporated or to be incorporated in a building or civil engineering work (whether by being installed as fixtures or fittings or otherwise),

(*e*) any ship, boat or other vessel, or

(*f*) any aircraft.

(5) Neither sub-paragraph (1) nor sub-paragraph (4) above shall require anything which a person carrying on a business does otherwise than for a consideration in relation to any goods to be treated as a supply except in a case where that person or any of his predecessors is a person who (disregarding this paragraph) has or will become entitled—

(*a*) under sections 25 and 26, to credit for the whole or any part of the VAT on the supply, acquisition or importation of those goods or of anything comprised in them; or

(*b*) under a scheme embodied in regulations made under section 39, to a repayment of VAT on the supply or importation of those goods or of anything comprised in them.

(5A) In relation to any goods or anything comprised in any goods, a person is the predecessor of another for the purposes of this paragraph if—

(*a*) that other person is a person to whom he has transferred assets of his business by a transfer of that business, or a part of it, as a going concern;

(*b*) those assets consisted of or included those goods or that thing; and

(*c*) the transfer of the assets is one falling by virtue of an order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services;

and references in this paragraph to a person's predecessors include references to the predecessors of his predecessors through any number of transfers.

(6) Anything which is a supply of goods or services by virtue of sub-paragraph (1) or (4) above is to be treated as made in the course or furtherance of the business (if it would not otherwise be so treated); and in the case of a business carried on by an individual—

(*a*) sub-paragraph (1) above applies to any transfer or disposition of goods in favour of himself personally; and

(*b*) sub-paragraph (4) above applies to goods used, or made available for use, by himself personally.

(7) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (2)(*a*) above such sum, not being less than £10, as they think fit.

PARAGRAPH 6 OF SCHEDULE 4

(1)Where, in a case not falling within paragraph 5(1) above, goods forming part of the assets of any business—

(a) are removed from any member State by or under the directions of the person carrying on the business; and

(b) are so removed in the course or furtherance of that business for the purpose of being taken to a place in a member State other than that from which they are removed,

then, whether or not the removal is or is connected with a transaction for a consideration, that is a supply of goods by that person.

(2) Sub-paragraph (1) above does not apply—

(a) to the removal of goods from any member State in the course of their removal from one part of that member State to another part of the same member State; or

(b) to goods which have been removed from a place outside the member States for entry into the territory of the Community and are removed from a member State before the time when any Community customs debt in respect of any Community customs duty on their entry into that territory would be incurred.

ARTICLE 2.1

The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

(b) the intra-Community acquisition of goods for consideration within

the territory of a Member State by:

(i) a taxable person acting as such, or a non-taxable legal person,

where the vendor is a taxable person acting as such who is not

eligible for the exemption for small enterprises provided for in

Articles 282 to 292 and who is not covered by Articles 33

or 36;

(ii) in the case of new means of transport, a taxable person, or

a non-taxable legal person, whose other acquisitions are not

subject to VAT pursuant to Article 3(1), or any other

non-taxable person;

(iii) in the case of products subject to excise duty, where the excise

duty on the intra-Community acquisition is chargeable,

pursuant to Directive 92/12/EEC, within the territory of the

Member State, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1);

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

(d) the importation of goods.

….

ARTICLE 14.1

'Supply of goods' shall mean the transfer of the right to dispose of tangible property as owner.

ARTICLE 16

The application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, shall be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible.

However, the application of goods for business use as samples or as gifts of small value shall not be treated as a supply of goods for consideration.

ARTICLE 17

The transfer by a taxable person of goods forming part of his business assets to another Member State shall be treated as a supply of goods for consideration.

'Transfer to another Member State' shall mean the dispatch or transport of movable tangible property by or on behalf of the taxable person, for the purposes of his business, to a destination outside the territory of the Member State in which the property is located, but within the Community.

ARTICLE 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

….

(e) the VAT due or paid in respect of the importation of goods into that Member State.