The Offshore Tax Planning Review

VAT AND THE CHANNEL ISLANDS AFTER 1993

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Introduction

When Sir Brian Unwin said of the VAT single market that: "...it is jolly uncomfortable and extraordinarily difficult,..."[2] he was talking of the administrative problems faced by Customs and Excise itself. If the administrators have found life hard, there can be no doubt that the legislators in Brussels and London have as well. Some errors have been admitted and in the UK a few statutory instruments have been introduced with the sole object of remedying the unintended effects or inadequacies of earlier legislation.[3]

Life has not been easy either for taxpayers and their advisers who have had their problems interpreting and applying a mountain of EC and domestic legislation (the changes necessitated by the VAT single market have resulted in the making of over thirty statutory instruments in the UK). Nevertheless, the 1993 changes have already produced practical advantages for many traders, with the Freight Transport Association reporting reductions in some cross-border haulage journey-times of up to 25 per cent[4].

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2 *The Financial Times*, 17th March 1993.

3 For example, the Value Added Tax (General) (Amendment) Regulations 1993 SI 1993/119 re-introduce into the Value Added Tax (General) Regulations 1985 ("the General Regulations"), Regulation 29 (2) to (6), which according to Customs and Excise had been "inadvertently removed" by the Value Added Tax (General) Amendment (No 4) Regulations 1992, SI 1992/3102 (STI [1993] 330).

4 As reported in "No More Fiscal Frontiers in Europe", Deidre Wells of HM Customs and Excise, *The Tax Journal*, Issue 218, p10, 24th June 1993.

It might be thought that the Channel Islands, being outside the single market, is unaffected by the difficulties it creates and not greatly benefited by the advantages it produces. Nevertheless, the abolition of fiscal frontiers within the EC inevitably has consequences for traders outside it, such as those in the Channel Islands. They may find, for example, that they need to obtain a VAT registration within the single market in certain circumstances. In addition to taking account of the new substantive VAT rules which have come into effect it is also important that the new single market developments affecting tax administrations are considered. As we shall see, at the same time as facilitating cross-border trade, the EC is keen to develop cross-border co-operation betw^een tax administrations. Apart from the legislation relating to the introduction of the single market, there have been other recent developments in VAT law which affect the Channel Islands and those affecting holding companies will be mentioned later.

Before looking briefly at some aspects of VAT and the Channel Islands after 1993 it is worthwhile reviewing the legal foundations of the single market and examining its geographical extent.

The Single Market Legislation

As is well-known, the deadline of 1993 for the internal market (or "single market") was imposed by Article 13 of the Single European Act ("SEA") of 1986 which introduced Article 8a into the EEC Treaty. This provides that:

> "...the Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31st December 1992."

Article 8a defines the internal market as:

> "...an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."

The legal basis for the harmonisation of VAT is set out in Article 99 of the Treaty of Rome. As amended by the SEA it provides for the unanimous adoption by the Council of:

> "...provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Article 8a."

The two Directives which introduce the single market regime amend the 6th Directive[5] and may be called, the Single Market Directive of 16th December 1991[6] and the First Simplification Directive of 14th December 1992 [7]. So far as the UK is concerned, apart from the numerous statutory instruments which have been made, the relevant legislation takes the form of amendments to the Value Added Tax Act ("VATA") 1983.

Although 31st December 1992 was the date by which tax frontiers were supposed to be abolished it was not the date upon which the VAT regime took on its final form. Instead, a transitional phase commenced that will last until at least 31st December 1996. At the end of the transitional phase a new VAT regime will come into force.

The present transitional regime maintains the destination principle, i.e., "exports" are VAT exempt and the "importing" state of destination imposes the charge to tax. However, the final regime, in accordance with the early VAT directives, is intended to operate the origin principle which requires that tax is imposed by the state from which goods originate. The introduction of this principle creates at least two major difficulties. First, it requires tax rates to be harmonised so that purchasers of goods cannot make their purchases in the state which imposes the lowest rate of tax. Second, it necessitates the establishment of a clearing system to re-allocate the tax revenue lost by the state of destination and gained by the state of origin. It would be unwise to assume that these difficulties will mean that the transitional period will be extended too far beyond 31st December 1996. Progress towards rate harmonisation, for example, has already begun with the minimum standard rate being set at 15 per cent and two reduced rates being set at not lower than 5 per cent.[8]

The VAT Single Market - Its Geographical Scope

When we come to look at the geographical scope of VAT legislation it is helpful to bear in mind the existence of at least three distinct geographical areas. First there is the area within the Common Customs Tariff ("CCT"), second there is the area of the single market generally, and third there is the area of the VAT single

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5 Directive 77/388 (OJ 1977 L/145/1).

6 Directive 91/680 (OJ 1991 L/376/1).

7 Directive 92/111 (OJ 1992 L/384/47).

8 Directive 92/77/EEC (OJ 1992 L/316).

market[9]. For many purposes the exact configuration of these areas is not important, but it becomes so when offshore and low-tax jurisdictions are considered. A brief review of the position of some of them may, therefore, be helpful.[10]

Madeira and the Azores are within the single market for VAT and most other purposes as part of Portugal, whilst the Balearic Islands occupy the same position as part of Spain although outside the customs territory[11]. Monaco is treated as part of France for the purposes of VAT and is part of the customs territory of the EC but is otherwise outside the scope of the EEC Treaty. The Isle of Man (unlike the Channel Islands) is part of the UK for the purposes of VAT[12]. Like the Channel Islands, though, it is within the customs territory.[13] Although the Isle of Man may be thought by some to have certain advantages as a low tax area within the VAT single market, not everyone considers its position in relation to the EC satisfactory. One commentator has said:

> "...the Isle of Man...has failed to address the issues raised by the evolution of the European Community and the Maastricht Treaty...we are likely to get the worst of all worlds. We are lumbered with the UK's VAT system, but derive absolutely no benefit from the European Community."[14]

The Channel Islands are not the only areas which are outside the VAT single market but within the area of the CCT. The same is true of Mount Athos, San

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9 As to which see the 6th Directive Article 3 as amended, and regulations 57D and 57E of the amended General Regulations.

10 See also the Background Report of the Commission of the EC. The European Community's relations to French Overseas Departments, European Autonomous Regions, Overseas Countries & Territories & Independent Countries within EC boundaries (ISEC/B33/92) European Taxation 33 (1993) 238.

11 See the Act of Accession of Spain and Portugal 1985 Articles 125 and 155 (the Canary Islands) and Articles 376 and 377 (Madeira and the Azores).

12 The governments of the UK and the Isle of Man so agreed on 15th October 1979. See also the Isle of Man Act 1979 and the statutory instruments made under it.

13 Protocol No.3 on the Channel Islands and the Island of Man to the Accession Treaty.

14 Charles A. Cain: "Return to the Isle of Man", *Offshore Investment*, Issue 36, p10 at p11, May 1993.

Marino, and Jungholz and Mittelberg. Finally, it should be borne in mind that Gibraltar is outside the area of the CCT, the VAT single market and the Common Agricultural Policy, but otherwise subject to EC law[15]. Andorra is outside both the CCT and the single market generally.

The position of jurisdictions like the Channel Islands and other so-called "third countries" in relation to the VAT single market caused the legislators themselves some difficulty. It was dealt with in the Single Market Directive but just under a year after that Directive had been passed and only days before 1st January 1993 amendments were introduced by the First Simplification Directive. Amongst other things, this removed the specific reference to the Channel Islands made in the Single Market Directive[16], made it clear that the Isle of Man and Monaco were not "third countries", i.e., outside the VAT single market, and ensured that goods entering the EC from all third countries were imports.

Prior to the introduction of the VAT single market, supplies of goods which crossed the boundaries of EC states were imports or exports as appropriate. That is no longer the case. Such concepts are now only appropriate when the boundary of the VAT single market is crossed. Within the single market imports and exports have been replaced by a new concept, the intra-community acquisition. This change within the single market has some significant effects on jurisdictions like the Channel Islands and it is worth spending some time briefly reviewing it.

The Intra-Community Acquisition

The task which the governments of the EC States gave to the EC officials was to find a concept which ensured that tax was not charged by reference to a national boundary after 1992, but that at the same time protected their tax receipts and ensured that national tax collecting agencies were able to operate effectively. The intra-community acquisition of goods for a consideration satisfies these criteria. Article 28a.3 of the 6th Directive provides for two fundamental elements of the new concept. First, an acquisition of the right to dispose as the owner of tangible property which, second, is dispatched or transported to the person acquiring the goods to a member state other than that from which the goods are dispatched or transported.

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15 See Article 28 of the Act of Accession of 1972.

16 See the amendments to the definition of "Importation of goods" in the 6th Directive by article 2.1.(b) of the Single Market Directive and article 1.2 of the First Simplification Directive.

The control of the member states is maintained over the transaction because the dispatch is within the control of one state and the acquisition is within the control of the other. As has been said:

> "...it was...necessary to make sure that the interlocking of fiscal sovereignties, both in time and space, was hermetic so that no gaps could exist in the tax net: within the Community, when one fiscal sovereignty ceases to apply, another must immediately take over."[17]

The state which controls the acquisition is primarily the state where the goods are located at the time dispatch or transport to the acquirer ends, since that is primarily the state in which the acquisition occurs.[18] Without prejudice to that principle, the place of acquisition is within the territory of the state which issued the VAT identification number of the acquirer. If the two states are different, the liability to VAT in the latter state is reduced by the amount of the liability to VAT in the former state. The right of the state in which the acquisition occurs to tax the acquisition is established by locating the chargeable event within its boundaries. The chargeable event, instead of being an importation, occurs when the intra-community acquisition of goods is effected. It is regarded as being effected when the supply of similar goods is regarded as being effected within the state of acquisition[19].

It should be noted that specific steps have been taken to counter VAT fraud in cross-border situations. All VAT registered persons should be able to demonstrate their tax status to those with whom they deal and VAT registered persons in one country will be able to contact the national authorities of another country to confirm the VAT numbers of registered persons with whom they are dealing.

Triangular Transactions

The intra-community acquisition is ideally suited to a simple commercial situation in which there is a single buyer and a single seller. In these circumstances the hermetic seal between the two member states can easily be seen to be effective. Commercial life is not so neat as the concept which has been created, though, and

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17 M. Aujean (Head of the VAT Division in the EC Commission) and Peter Vis: "VAT in the Single Market: The Transitional Arrangements Explained", *EC Tax Review* (1992) 117.

18 Article 28b of the 6th Directive.

19 Article 28d.1 of the 6th Directive.

often there are intermediaries between the buyer and seller who purchase the goods without taking delivery of them. This fundamental fact of business life was, apparently, only acknowledged by the Commission relatively late in the day and amendments were made in the First Simplification Directive to take account of the presence of intermediaries.

Under the original rules there would be no intra-community acquisition between the seller and the intermediary, since there would be no delivery of goods from one member state to the acquirer of title in another member state. It would, therefore, have been necessary for the intermediary to register in the member state of the buyer. The place of acquisition would then, according to Article 28b of the 6th Directive, be the territory of the member state which issued the VAT number. The transaction between the seller and the intermediary would then be an intra-community acquisition. The transaction between the intermediary and the buyer would be a domestic supply of goods within the state of the buyer.

Had this state of affairs been allowed to remain, intermediaries would have found it necessary to effect multiple VAT registrations. The First Simplification Directive provided a way out of this difficulty[20]. It states that in these "triangular" situations the general rule that rights of taxation are given to the state in which the goods are situated when dispatch or transport ends will be applied if certain conditions are satisfied. It is not proposed to discuss these conditions in detail. However, they include the requirement that the goods acquired by the intermediary are directly dispatched or transported from a member state other than one in which he is registered and destined for the person for whom he effects the subsequent supply. Furthermore, the recipient of the subsequent supply must be designated the person liable for the tax which is due within Article 21(1)(a) of the 6th Directive.

The procedure which the First Simplification sets out is adequate where the intermediary makes a supply to the ultimate buyer but creates problems where the first intermediary transfers title to the goods to a further intermediary in another member state. It would seem arguable that in order for the First Simplification Directive to apply the goods ought to be destined for the second intermediary and that the second intermediary, not the ultimate buyer, should be designated as liable for the VAT due. In view of this, a further simplification Directive designed to deal with "chain transactions" has been suggested.

20 See also the Finance Bill 1993 clause 44 for the UK provisions which provide for an intermediary to be ignored in certain circumstances.

An Intermediary in the Channel Islands

Having seen the difficulties that are faced by intermediaries who are based within the EC we are now able to examine the fate of an intermediary in the Channel Islands. The supply to it will not constitute an intra-community acquisition since not only is the dispatch of goods to someone other than the acquirer of them, the acquirer is outside the VAT single market. As may be expected, the First Simplification Directive will not assist intermediaries in this position. If it is not an intra-community acquisition, neither is it a zero-rated export of goods. The goods remain within the single market all the time. The result is that a taxable supply of goods is made on which VAT will be due and that VAT will be borne as an irrecoverable cost by the intermediary.

If the intermediary in the Channel Islands wishes to improve its position it can register in the EC and then take advantage of the provisions of the First Simplification Directive. Any decision to register should be taken with care. What the intermediary must not do is to ensure that the VAT position is improved whilst damaging its general tax position by, for example, creating a permanent establishment somewhere within the EC and losing its advantageous position in relation to taxes on capital and income.[21]

If a VAT registration is necessary it may not prove excessively troublesome provided it is approached carefully. Nevertheless, it is not surprising that the Isle of Man has seen the role of intermediaries as an area in which it can compete strongly. It has been said in relation to triangular transactions that:

> "This is where the Isle of Man's unique situation reaps dividends."[22]

Since it is within the VAT single market, an intermediary placed in the Isle of Man can, unlike its counterpart in the Channel Islands, take advantage of the First Simplification Directive. Customs and Excise in the Isle of Man have apparently confirmed the terms on which they will accept registration of businesses on the Island. In outline these apparently are: that all books and records are held and maintained in the Isle of Man; that certain specified documentation is generated in

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21 It should be noted here that the Double Tax Arrangement between Guernsey and the UK provides that: "The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise." (Paragraph 2(1)(k)).

22 G.Jones and P. Deuchars "Developments in International Taxation", *Offshore Investment*, Issue 36, p17, May 1993.

the Isle of Man; that an Isle of Man bank account is maintained; and that there exists an individual with an Isle of Man registered address who is familiar with the trading affairs of the business who can deal with its VAT affairs.

The opportunities which are open to the Isle of Man in triangular transactions may also be available in places like Madeira or Monaco.

Imports of Goods

Although cross-border transfers of goods within the EC are no longer imports and exports the position with regard to the Channel Islands is unchanged. Being outside the VAT single market, transfers of goods between the Channel Islands and the EC will be imports or exports as the case may be.

It has to be borne in mind that VAT is charged by the state in which certain supplies of goods and services are made. When the place of departure of goods is in a third territory such as the Channel Islands, the place of supply is deemed to be within the member state into which the goods are imported[23]. The chargeable event occurs and the tax becomes chargeable when the goods are imported and a right of deduction arises. There are a number of reliefs in relation to importation which it is not proposed to look at in this article. It is worth, though, looking at exactly what an importation is.

According to Article 7 of the 6th Directive, importation occurs, in the first place, on the entry into the VAT single market of goods which are not in free circulation. "Free circulation" is a concept which has its roots in the customs union established by the EC Treaty. It exists:

> "...if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges."[24]

Were the definition of importation to extend no further, imports of goods from the Channel Islands would not, of necessity, be included. The Channel Islands, being within the area of the CCT, it is perfectly possible (although not inevitable) that goods which pass from there into the EC single market will be in free circulation.

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[23] Article 7.2 of the 6th Directive.

[24] Article 10.1, EEC Treaty.

Accordingly, the definition of an importation is extended (and was clarified by the First Simplification Directive) so that it covers goods entering the EC single market from third countries, such as the Channel Islands, which are in free circulation.[25]

The UK legislation which deals with the definition of an import is set out in VATA 1983 section 2B(2)[26]. It covers the situation where goods are removed from a place outside the Member States and enter the Community in circumstances in which the Community customs debt is incurred on their removal to the UK or whilst they are in the UK. It is also worth noting that the concept of importation covers situations in which goods are removed to the UK after entering the territory of the Community. Hence indirect imports, for example, goods imported from the Channel Islands to the UK via France, are included.[27]

It will be apparent that the law of customs duty is of great significance in relation to importation. This is only to be expected since VAT on importation of goods is to be charged and payable as if it were a duty of customs.[28] Other areas in which customs duty law is of significance include, the time of entry of goods into the Community, the time that a customs debt is incurred, the valuation of goods and liability for tax[29]. The limits on the Customs legislation which is applicable is set out in the General Regulations[30]. It should also be borne in mind that customs duty law has now been codified in the Common Customs Code[31], most of which is not yet applicable.

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25 See article 7.1 of the 6th Directive as amended by the Single Market Directive and the First Simplification Directive.

26 See also VATA 1983 section 32 by virtue of which goods imported by a taxable person and supplied as agent for a non-taxable person may be treated as imported by the taxable person.

27 See VATA 1983 section 2B(2)(b).

28 Article 10.3 of the 6th Directive and VATA 1983 sections 2B and 24.

29 See VATA 1983 sections 11 and 48(1A).

30 See regulations 40 and 57H.

31 Council regulation (EEC) No. 2913/92 of 12th October 1992.

Exports of Goods

So far as exports of goods, to the Channel Islands or other third countries, are concerned, zero-rating still applies.[32] The formalities to be fulfilled are set out in the General Regulations 57F(2) and 57J. Exporters must fill in the Single Administrative Document (or a simplified document) and hold valid commercial evidence of exportation of the goods from the UK in order to obtain zero-rating. There are specific requirements to be met in the case of exports made via another EC state.

Although it is not concerned with the single market legislation, it is worth noting a recent case in which the necessity for the goods actually to be exported from the UK caused serious difficulties. In *ESS International Limited v CCE*[33] a UK supplier sold computer equipment to an Irish company pursuant to a contract which contained a title retention clause. The goods were collected by a carrier on behalf of the buyer who was to arrange their shipment outside the EC. They were impounded at Manchester airport for lack of the necessary export papers. The UK supplier had not been paid by the carrier (as was permitted under the contract) and title remained with him. The Customs and Excise charged VAT on a supply of goods within the UK and was unsurprisingly successful in upholding the charge before the Tribunal.

The Tribunal noted that:

> "The consequences of this case for the appellant are serious. Persons in the appellant's position would do well to heed the warning at the beginning of Part III of the Commissioners' Notice 703:
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> > "If you do not arrange the exportation yourself, you should consider taking a deposit from your customer equal to the amount of VAT which you will have to account for if you do not get a satisfactory proof of export."[34]

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[32] VATA 1983 section 16(6).

[33] MAN/90/743, [1992] 3 CMLR 716.

[34] *Supra* at p724, paragraph [19].

Transit Procedures

It is beyond the scope of this article to examine transit procedures in any detail. It is worth bearing in mind the existence of internal and external transit procedures, though, if only because it is essential for transporters to ensure that goods subject to the different procedures are kept separate. Two examples can be given. Where goods are transferred to the UK from another part of the single market via the Channel Islands the internal transit procedures apply unless the goods are not in free circulation. On the other hand, the external procedures will apply where goods are exported to the Channel Islands from another member state via the UK.

Supplies of Services

The Single Market Directive is less concerned with supplies of services than with goods, although Article 28b C to E of the 6th Directive does introduce provisions regarding intra-Community transport, services ancillary to the intra-Community supply of goods and services by intermediaries.

So far as supplies of services to persons in the Channel Islands from persons in the UK are concerned, the ultimate VAT position is not changed by the single market legislation, but the analysis of the transaction is somewhat different. A taxable supply of services must be a supply made in the UK to be chargeable to UK VAT.[35] The general rule of the 6th Directive is that supplies are made where the supplier is established.[36] There is an exception to this rule in relation to some services including those of consultants, engineers, lawyers and accountants.[37] Such services are provided where the recipient belongs. Prior to the single market changes the UK had not implemented this but instead subjected the services supplied from the UK to a zero rate.[38]

The position has been changed by the Value Added Tax (Place of Supply of Services) Order 1992[39]. This legislation now implements the rule requiring the

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35 VATA 1983 section 1.

36 Article 9.

37 Article 9.2(e).

38 See VATA section 16(6) and Schedule 5 Group 9 and Schedule 3 paragraphs 1 to 7.

39 SI 1992/3121.

specified services to be supplied where the recipient belongs (and in doing so manages to create its own difficulties). Nevertheless, the services of consultants, engineers, lawyers and accountants amongst others are now supplied in the Channel Islands if that is where the recipient belongs. The effect is that instead of being zero-rated, the services are outside the scope of VAT altogether. They remain, therefore, free of VAT. The deductibility of inputs is permitted notwithstanding that the supply is exempt.[40]

So far as supplies of services by persons based in the Channel Islands to persons situated in the UK are concerned, it may be thought that the Channel Islands can be said to benefit from being excluded from the VAT single market. As is well-known supplies of certain services, like those provided by lawyers and accountants, which are within Schedule 3 VATA, 1983 may suffer a reverse charge[41]. On basic principles they would fall outside the scope of UK VAT as being services provided outside the UK but are brought into charge by being subjected to tax as if the recipient had supplied the services in the UK.

The advantage which the Channel Islands may utilise results from the well-known case in the European Court of Justice; *Polysar Investments Netherlands BV v Inspecteur der Invoerrechten en Accijnzen te Arnhem*[42], in which the Court concluded that:

> "...a holding company whose sole purpose is to acquire holdings in other undertakings, without involving itself directly or indirectly in the management of those undertakings...does not have the status of a taxable person for the purposes of VAT."[43]

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40 See VATA 1983 section 15(2)(ba) and regulation 32 of the General Regulations as amended by the Value Added Tax (General) (Amendment) (No 4) Regulations 1992. It should be noted that in relation to certain agency services in the financial sector there will be a loss of the right to deduct input tax: see STI [1993] 25.

41 VATA 1983 section 7.

42 No. C-60/90, STC [1993] 222. See also "Value Added Tax and Holding Companies: A major change of policy or a small problem of translation" Christopher Bates, Fiscal Studies (1993) Vol 14 No 2 117-127, and "VAT: Recovery of Input Tax, Treatment of Holding Companies", HM Customs and Excise Consultative Paper.

43 *Supra* p239.

Polysar was considered in *Newmir PLC v CCE*[44] and the UK VAT Tribunal concluded on the facts before it that the holding company in question made no supplies of services.[45] Accordingly, if a holding company which is simply engaged in holding shares of subsidiaries is placed in the Channel Islands as a source of services subject to the reverse charge, no VAT will be chargeable since the holding company would not be chargeable to tax had it supplied the services in the UK.

Changes in Administration

Being excluded from the VAT single market has, as we have seen, given the Channel Islands both possible advantages and disadvantages in terms of the substantive law of VAT. Equally important, though, is the nature of the EC tax administrations with which many of their clients have to deal. In the preamble to the Single Market Directive it states that:

> " ... the necessary pursuit of a reduction of administrative and statistical formalities for undertakings, particularly small and medium sized undertakings, must be reconciled with the implementation of effective control measures and the need, on both economic and tax grounds, to maintain the quality of the Community statistical instruments."

The maintenance of "effective control measures" is understandably a concern of the European Commission. It is clear that it is concerned with tax avoidance[46] and efficient administration to avoid revenue losses. Powers of mutual assistance both in indirect and direct taxation have already been given to the member states

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[44] LON/92/900.

[45] It must be emphasised that the nature of the operations of the holding company are likely to be very important. In a recent case on quite different facts before the ECJ, on which judgment is awaited, the Advocate General rejected a restriction of the input tax deductible by a holding company. The case of *UBAF Bank Lt v CCE* (LON/91/2623Y) should also be borne in mind. *Polysar* was not, apparently, relied on by the CCE and the Tribunal held that business expenditure incurred by the holding company in question was attributable to a taxable business. The decision is subject to an appeal.

[46] The Commission has advised the Member States on countering tax avoidance, see paragraph 3.36 of "HM Customs and Excise Countering VAT Avoidance", a Report by the Comptroller Auditor General HMSO 196.

revenue authorities[47] With the coming of the advantages to traders of the single market, the tax authorities have been given powers to enhance their own cross-border activity in indirect tax matters. A recent Council Regulation[48] now provides for electronic storage and transmission of data within the EC. Its preamble states that:

> " ... in order to avoid tax revenue losses for Member States the tax harmonisation measures taken to complete the internal market and for the transitional period must include the establishment of a common system for the exchange of information on intra-Community transactions between the competent authorities of Member States."

Given the Commission's dislike of tax avoidance it was only to be expected that it would regard the use of tax shelters as a problem (to which it referred to in a Commission communication in 1984[49]).

In conclusion it can be said that, given the developments in the EC, advisers in the Channel Islands and elsewhere would do well to bear in mind that the tax authorities of the Member States cannot be seen as a collection of unrelated official entities. There are now many reasons for saying:

> "la fiscalité des états membres est devenue "communautaire""[50]

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47 Council Directive 77/799 (OJ 1977 L/336/1).

48 218/92/EEC of 27th January 1992.

49 Doc. COM (84) 603 final. Suspicion of tax shelters is not, however, confined to Brussels. After all, it was only recently that a Bill entitled the Transactions with Tax Havens (Sanctions) Bill 1992 was published in the UK. It was intended: "... to provide sanctions against persons or organisations who engage in financial dealings with tax havens ... and to regulate the activities of advocates, barristers and solicitors with regard to transactions with tax havens ... ". The Channel Islands and the Isle of Man were considered tax havens for these purposes. The Bill did not become law.

50 D. Berlin: "Droit Fiscal Communautaire" (Paris 1988) at p13.