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**Place of Supply of services connected with immovable property**

**A technical paper prepared for members by the CIOT**

**1 July 2014**

## **PLACE OF SUPPLY OF SERVICES CONNECTED WITH IMMOVABLE PROPERTY**

### **Introduction**

This guide has been prepared with a view to providing some clarity regarding the place of supply of services connected with immovable property. The guide seeks to bring together all appropriate legislation, guidance and case law on this area, and aims to be a comprehensive list of services and their VAT treatment. We will update the document in line with case law and new legislation.

For each service, the footnote indicates the source of the treatment stated. The CIOT has indicated in relation to each service whether it agrees with the stated treatment and, if not, why not. We sought the views of HMRC in late 2013 on the treatment of the services and have indicated whether or not HMRC agreed with the view stated. However, it should be borne in mind that HMRC will assess the tax liability of any transaction on its particular facts.

For ease of use, the guide covers the place of supply of four categories of service:

1. Use of and access to land and buildings; eg letting of land or access to premises.
2. Physical or tangible land-related services; eg construction services or assembly / dismantling of immovable structures.
3. Professional or intangible services supplied by property professionals; eg estate agents, surveyors etc.
4. Professional or intangible services supplied by other professionals; eg accountants and lawyers.

Where the examples are specific in nature, it is because they derive from case law or particular guidance, and so are illustrative of what is and is not considered to be connected with land. Where an example is specifically covered by Council Implementing Regulation 1042/2013, we have simply agreed with the treatment, because it is directly applicable anyway.

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## CIOT COMMENTARY

Council Implementing Regulation (EU) No 1042/2013 has provided significant guidance relating to:

- The nature of immovable property
- The level of connection required between the service and the immovable property
- The types of services which are and are not considered to be connected with immovable property

Whilst these parts of the Regulation do not apply until 1 January 2017, the UK has already implemented most (if not all) of this in guidance; see in particular Revenue & Customs Brief 22/12.

In addition, the recent judgment of the European Court in the RR Donnelley case<sup>1</sup> further highlighted the close connection required in order for a supply to be considered as being connected with immovable property.

### CIOT general view

We interpret the Regulation and guidance to the effect that, in order for services to be considered to be connected to immovable property, they must have a sufficiently direct connection with that property [our emphasis]. ie there are two elements to consider:

1. That there must be a direct connection to property; and
2. The connection must be to a specific property.

We also consider that the services must generally:

1. Allow physical use of specific property (eg lease of a specific property);
2. Change the physical characteristics of specific property (eg construction of a new building);
3. Survey or assess specific property (eg geographical survey of specific land); or
4. Have the property as a central and essential element of the service; or
5. Change the legal status of physical property (eg lawyers' fees relating to the sale of a property).

It is for these reasons that (save for the examples listed in Regulation 1042/2013, and exceptional circumstances) legal and consultancy services would NOT normally have a sufficiently direct connection with specific property, unless they are ancillary to another service which is connected to that property. Such services would, therefore, fall under the normal place of supply rules.

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<sup>1</sup> *Minister Finansów v RR Donnelley Global Turnkey Solutions Poland Sp. Zoo*, ECJ Case C-155/12

**USE OF AND ACCESS TO LAND AND BUILDINGS ETC.**

Description of supply	Connected to land?		Agreed by CIOT?
	Yes	No	
1. The grant, assignment or surrender of any interest in or right over land. <sup>2 3</sup>	Y		Y
2. The grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land. <sup>4</sup>	Y		Y
3. The grant, assignment or surrender of a license to occupy land or any other contractual right exercisable over or in relation to land <sup>5</sup> (including the provision of hotel and holiday accommodation <sup>6</sup> , seasonal pitches for caravans and facilities at caravan parks for persons for whom such pitches are provided and pitches for tents and camping facilities <sup>7</sup> ).	Y		Y
4. The provision of car parking. <sup>8</sup>	Y		Y <sup>9</sup>
5. The provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation <sup>10</sup> or for the purpose of a supply of catering. <sup>11</sup>	Y		Y
6. The supply of timeshare accommodation by a principal, when the points are converted into supplies of land <sup>12</sup> , arranging the exchange of timeshare units <sup>13</sup> and supplies of hotel and holiday accommodation by tour operators acting as principal. <sup>14</sup>	Y		Y
7. Arranging the supply of hotel accommodation or similar services <sup>15</sup> acting in the name and on behalf of another person. <sup>16</sup>		N	Y
8. The letting of a caravan (touring or static), or a tent, on a camp site or similar <sup>17</sup> .	Y		Y
9. The supply of telecommunications, broadcasting or electronic services, provided by a taxable person acting in his own name, together with hotel accommodation or similar services. <sup>18</sup>	Y		Y
10. The supply of telecommunications, broadcasting or electronic services in circumstances other than the above ie not supplied with hotel accommodation etc. <sup>19</sup>		N	Y
11. The granting of rights of access to airport lounges <sup>20</sup> .	Y		Y
12. The grant of fishing rights which relate to a specific stretch of water, or hunting rights in a defined area of land <sup>21</sup> .	Y		Y <sup>22</sup>

<sup>2</sup> Paragraph 2 a), Part 1, Schedule 4A, VAT Act 1994; Regulation 1042/2013 (ref Art 31a 2(h))

<sup>3</sup> Where the supply is a major interest, it is not within Article 47, although the place of supply will be where the land is located

<sup>4</sup> Paragraph 2 b), Part 1, Schedule 4A, VAT Act 1994; VATPOSS07600

<sup>5</sup> Paragraph 2 c), Part 1, Schedule 4A, VAT Act 1994

<sup>6</sup> Paragraph 6.4, Public Notice 741A, January 2010

<sup>7</sup> Revenue & Customs Brief 22/12

<sup>8</sup> VATPOSS07600

<sup>9</sup> If parking is available across territories, an apportionment would need to be made on a just and reasonable basis

<sup>10</sup> Regulation 1042/2013 (ref Art 31a 2(i))

<sup>11</sup> Paragraph 2 d), Part 1, Schedule 4A, VAT Act 1994

<sup>12</sup> Regulation 1042/2013 (ref Art 31a 2(i)); *Macdonald Resorts Ltd v Revenue & Customs Commissioners* (Case C-270/09)

<sup>13</sup> *RCI Europe v Revenue and Customs Commissioners* (Case C-37/08)

<sup>14</sup> Notice 709/5, Tour Operators Margin Scheme

<sup>15</sup> Revenue & Customs Brief 22/12

<sup>16</sup> 1042/2013 (ref Art 31a 3(d))

<sup>17</sup> Regulation 1042/2013 (ref Art 31a 2(i))

<sup>18</sup> Regulation 1042/2013 (ref Art 31c)

<sup>19</sup> The opposite of the above

<sup>20</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 2(j)) It is not clear how this applies to passes to airport lounges entitling the holder to access to lounges in different countries. It seems likely that the rule only applies where the access is to a specific lounge otherwise the general rule will apply.

<sup>21</sup> Revenue & Customs Brief 22/12

<sup>22</sup> Revenue & Customs Brief 22/12; *Rudi Heger GmbH v Finanzamt Graz-Stadt* (Case C-166/05),

13. The grant of a right to moor a boat or a similar right over a defined area of land covered by water.	Y		Y <sup>23</sup>
14. Subject to the item below, the supply of space for the use of advertising bill-boards - for example the leasing of a plot of land or the side of a building to allow a billboard to be erected. <sup>24</sup>	Y		Y
15. Advertising services including those that involve the use of a billboard. <sup>25</sup>		N	Y
16. Lease or supply of a memorial or plaque which is affixed to land or buildings and cannot be easily removed. <sup>26</sup>	Y		Y
17. Supply of a memorial plaque or other display which is not affixed to land or buildings. <sup>27</sup>		N	Y
18. The provision of a site for a stand at an exhibition where the exhibitor obtains the right to a defined area of the exhibition hall <sup>28</sup> and does not receive any additional services. <sup>29</sup>	Y		Y
19. The provision of a site for a stand at an exhibition where the exhibitor does not reserve in advance a specific area of the exhibition hall or has no choice as to the location of the stand or where or whether the exhibition will take place (irrespective of whether any additional services are received) <sup>30</sup> .		N	Y
20. The provision of stand space (whether or not specifically reserved or allocated) together with accompanying services as a package, including such things as the design and erection of a temporary stand, security, power, telecommunications, hire of machinery or publicity material. <sup>31</sup>		N	Y <sup>32</sup>
21. The supply of warehouse space <sup>33</sup> where the grant is of a right to use a specific area of a UK warehouse or storage area for the exclusive use of the customer to store goods, and a right of access to the storage area is granted. <sup>34</sup>	Y		Y
22. The storage of goods where the supplier does not grant a right to a specific area for the exclusive use of the customer, nor a right of access to the storage area. <sup>35</sup>		N	Y
23. The hire of a theatre, with or without additional services or facilities. <sup>36</sup>	Y		Y
24. Provision of a recording studio where technicians are included as part of the supply. <sup>37</sup>		N	Y
25. Providing another person with access to office premises to make use of the facilities (eg on a temporary basis).		N	Y <sup>38</sup>
26. Provision of a defined area in a data centre to enable the customer to house its own racks, together with the necessary infrastructure and power/data connections (with or without on-site support and technical services). <sup>39</sup>	Y		Y <sup>40</sup>

<sup>23</sup> See, for example, *Fonden Marselisborg Lystbådehavn v Skatteministeriet* (Case C-428/02)

<sup>24</sup> Revenue & Customs Brief 22/12

<sup>25</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 3(c))

<sup>26</sup> *Sandwell Metropolitan Borough Council* TC02554

<sup>27</sup> *Sandwell Metropolitan Borough Council* TC02554

<sup>28</sup> Paragraph 6.4, Public Notice 741A, January 2010; VATPOSS07600

<sup>29</sup> Revenue & Customs Brief 22/12

<sup>30</sup> *International Trade and Exhibitions JV Ltd v C & E Comrs* (1996) VTD 14212; VATPOSS07600

<sup>31</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 3(e))

<sup>32</sup> There is no guidance on the level of additional services necessary to prevent the supply from being related to land, and it may be that each case needs to be considered on its own merits

<sup>33</sup> Paragraph 6.4, Public Notice 741A, January 2010

<sup>34</sup> Revenue & Customs Brief 22/12; *Minister Finansów v RR Donnelley Global Turnkey Solutions Poland Sp. z o.o* (Case C-155/12); Regulation 1042/2013 (ref Art 31a 2(h))

<sup>35</sup> Revenue & Customs Brief 22/12; *Minister Finansów v RR Donnelley Global Turnkey Solutions Poland Sp. z o.o* (Case C-155/12); Regulation 1042/2013 (ref Art 31a 3(b))

<sup>36</sup> Based on RR Donnelley, use of specific, immovable property, where property is the subject matter of the supply.

<sup>37</sup> Paragraph 6.5.1, Public Notice 741A, January 2010; VATPOSS07700 – this is a supply of engineering services

<sup>38</sup> This is not a supply of land and, consistent with the recording studio above, it is a supply of office services

<sup>39</sup> This is a real case involving Germany. The regional tax authority for the data centre supplier considers it is a supply connected with land, and insists on the supplier charging German VAT. However, centralised tax authority has rejected an EU refund claims on the basis that the supply is not connected with land.

27. Provision of a non-specific area in a data centre to enable the customer to house its own racks, together with the necessary infrastructure and power/data connections (with or without and on-site support and technical services).		N	Y
28. Provision of rack space (whether allocated or unallocated) in a data centre to house the customer's servers (with or without on-site support and technical services).		N	Y <sup>41</sup>
29. Bridge or tunnel toll fees. <sup>42</sup>	Y		Y <sup>43</sup>

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<sup>40</sup> There are similarities here both to the position regarding the supply of a recording studio, and to the storage of goods. On balance, the storage example is perhaps more relevant (ie it is specialist storage) and so the principle in *RR Donnelley Global Turnkey Solutions Poland Sp. z o.o* (Case C-155/12) may apply. An apportionment may be necessary where additional services are provided on a selective basis.

<sup>41</sup> When considering space for the actual servers, even if a defined space is allocated, we consider that the provision of the rack and supporting facilities (power, security etc) tip the balance away from a supply connected with immovable property, although many cases will need to be decided on their own merits. It is clear that this is a judgment call and that there will be situations in which the rule in item 26 will apply.

<sup>42</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 2(j))

<sup>43</sup> Presumably an apportionment or simplification may be required for bridges etc connecting countries.

**PHYSICAL OR TANGIBLE SERVICES – EG CONSTRUCTION, DEMOLITION, REPAIR ETC.**

Description of supply	Connected to land?		Agreed by CIOT?
	Yes	No	
30. Any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building <sup>44</sup> or civil engineering work <sup>45</sup> or permanent structure <sup>46</sup> such as pipelines for gas, water or sewage <sup>47</sup> including painting and decorating. <sup>48</sup>	Y		Y <sup>49</sup>
31. Services that involve the installation, assembly or repair of machines or equipment or the erection etc of buildings. <sup>50</sup>			
a. Installation, assembly, repair or maintenance of machines which, when installed, will form a fixture that 'cannot be easily dismantled' or moved <sup>51</sup> including commissioning and inspection.	Y		Y
b. Installation, assembly, repair or maintenance of machines or equipment which are not installed as a fixture <sup>52</sup> and are not, and do not become, part of the land or property. <sup>53</sup>		N	Y
c. Erection of pre-fabricated buildings, which would take around 80 man days to dismantle and remove.	Y		Y <sup>54</sup>
d. Erection of portable units (for student accommodation) which would take around ½ a day to dismantle and remove.		N	Y <sup>55</sup>
e. Dismantling / de-commissioning a printing machine over 50 yards long and over 4 yards wide, weighing 400-500 tons, fixed onto sole plates which rested on the floor, and which took 15 men around 3 months to dismantle.	Y		Y <sup>56</sup>
f. Demolition of two scrap shears, both over 60 tons in weight, bolted to foundations, which required 8 days to dismantle.	Y		Y <sup>57</sup>
g. Commissioning of an industrial waste incinerator complex, with an area of 755 square metres, and between 20 and 25 metres high at some points.	Y		Y <sup>58</sup>
h. Installation and rental of poly tunnels; large steel framed structures, bolted into 84 concrete blocks per tunnel, then encased in further concrete; the removal of which would be a 'considerable operation' and which are not designed to be moved.	Y		Y <sup>59</sup>
i. Storage units, which rest upon the ground under their		N	Y <sup>60</sup>

<sup>44</sup> Regulation 1042/2013 (ref Art 31a 2(c) and (k))

<sup>45</sup> Paragraph 2 e), Part 1, Schedule 4A, VAT Act 1994

<sup>46</sup> Revenue & Customs Brief 22/12

<sup>47</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 2(d) and (l))

<sup>48</sup> Paragraph 6.4, Public Notice 741A, January 2010

<sup>49</sup> Subject to the individual examples which follow

<sup>50</sup> The examples which follow are specific cases. What is important to both is (i) the extent of attachment to the ground and (ii) how long it would take to dismantle / remove the item from the ground. It is recognised that this is a sliding scale, and case law indicates that anything less than two man-days may not be sufficiently fixed to the ground for the supply to be related to land.

<sup>51</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 2(m) and (n)); see specific examples above for what may be taken to mean 'cannot be easily dismantled or moved'

<sup>52</sup> Paragraph 6.5.1, Public Notice 741A, January 2010; VATPOSS07700

<sup>53</sup> Revenue & Customs Brief 22/12

<sup>54</sup> *Rudolf Maierhofer v Finanzamt Augsburg-Land* (C-315/00)

<sup>55</sup> *The University of Kent v C & E Comrs* (2004) VTD 18625

<sup>56</sup> *McLean and Gibson (Engineers) Ltd v C & E Comrs* (2001) VTD 17500

<sup>57</sup> *Scottish Discount Co Ltd v Blin* [1986] SLT 123

<sup>58</sup> *Mechanical Engineering Consultants Ltd v C & E Comrs* (1995) VTD 13287

<sup>59</sup> *Argents Nurseries Ltd v Revenue & Customs Comrs* (2007) VAT decision 20045

own weight and are not fixed to the ground. The units can be dismantled and it would take two man-days to do so.			
j. A permanently moored boat, with no engine or means of propulsion, together with a plot of land and landing stage etc for use as a restaurant and disco.	Y		Y <sup>61</sup>
k. Services of installing an underwater fibre-optic cable.		N	Y <sup>62</sup>
l. Supply and installation of an underwater fibre-optic cable. <sup>63</sup>		N	Y
32. Agricultural work on land (including tillage, sowing, watering and fertilization). <sup>64</sup>	Y		Y
33. The supply of plant and equipment together with an operator, for work on a construction site <sup>65</sup> , or to allow the customer to carry out work on land or property where the supplier has responsibility for the execution of work. <sup>66</sup>	Y		Y
34. The supply of equipment with an operator, where it can be shown that the supplier has no responsibility for the performance of the work. <sup>67</sup>		N	Y
35. The secondment of staff to a building site. <sup>68</sup>		N	Y
36. The hiring out of civil engineering plant on its own. <sup>69</sup>		N	Y
37. Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or identifiable areas of the seabed. <sup>70</sup>	Y		Y
38. On-site security <sup>71</sup> or supervision <sup>72</sup> services, where the purpose of the presence is the protection of immovable property, rather than its moveable contents.	Y		Y
39. Waste collection / disposal services.		N	Y

<sup>60</sup> *Revenue and Customs Commissioners v UK Storage Company (SW) Limited* [2012] UKUT 359 (TCC) – included as illustrative as to whether ‘immovable property’ – now superseded by storage changes

<sup>61</sup> *Susanne Leichenich v Peffekoven & Horeis*, (C-532/11) - included as illustrative as to whether ‘immovable property’

<sup>62</sup> Whilst the cable will be connected to something at either end, such cabling is not normally fixed to the seabed, and so we do not consider this to become immovable property.

<sup>63</sup> *Aktiebolaget NN v Skatteverket* (Case C-111/05) – this is a supply of goods

<sup>64</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 2(e))

<sup>65</sup> Paragraph 6.4, Public Notice 741A, January 2010

<sup>66</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31b)

<sup>67</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31b)

<sup>68</sup> Paragraph 6.5.1, Public Notice 741A, January 2010 – this is a supply of staff

<sup>69</sup> Paragraph 6.5.1, Public Notice 741A, January 2010; VATPOSS07700

<sup>70</sup> Paragraph 6.4, Public Notice 741A, January 2010

<sup>71</sup> Revenue & Customs Brief 22/12

<sup>72</sup> Regulation 1042/2013 (ref Art 31a 2(b))

**PROFESSIONAL OR INTANGIBLE SERVICES SUPPLIED BY PROPERTY PROFESSIONALS**

Description of supply	Connected to land?		Agreed by CIOT?
40. Services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to particular land <sup>73</sup> buildings or civil engineering works. <sup>74</sup>	Y		Y <sup>75</sup>
41. The management, conveyancing, survey or valuation of property by a solicitor, surveyor or loss adjuster. <sup>76</sup>	Y		Y
42. Surveying and assessing property <sup>77</sup> , for example to assess the risk and integrity of immovable property <sup>78</sup> , or determine the contamination level of a site prior to construction, including the surveying (such as seismic, geological or geomagnetic) of land or seabed, including associated data processing services to collate the required information. <sup>79</sup>	Y		Y
43. Environmental impact assessments, for example on whether a wind turbine should be cited at a particular location, or the effect of new building projects.		N	Y <sup>80</sup>
44. Oceanography services, such as measuring or reporting sea currents and marine habitats.		N	Y <sup>81</sup>
45. Drawing up of plans for a building or part of a building designated for a particular site <sup>82</sup> regardless of whether or not the building is erected. <sup>83</sup>	Y		Y
46. Drawing up of plans for a building or part of a building that do not relate to a particular site. <sup>84</sup>		N	Y
47. Architects' services where there is no specific site of land. <sup>85</sup>		N	Y
48. Valuing property, for insurance or loan purposes <sup>86</sup> to determine the value of a property as collateral for a loan, or to assess risk and damages in disputes. <sup>87</sup>	Y		Y
49. Valuing property as part of a wider supply eg preparation of accounts.		N	Y
50. Advice or information relating to land prices or property markets (not site related). <sup>88</sup>		N	Y
51. The services of an interior designer contracted to redesign the decor of a particular hotel <sup>89</sup> or other building eg offices, restaurant etc.	Y		Y
52. Creation of a 'corporate' colour scheme/style, for example for a hotel chain to use in their own properties <sup>90</sup> .		N	Y

<sup>73</sup> Paragraph 2 f), Part 1, Schedule 4A, VAT Act 1994

<sup>74</sup> Paragraph 6.4, Public Notice 741A, January 2010; VATPOSS07600

<sup>75</sup> See, for example, *Brodrick Wright & Strong Ltd v C & E Comrs* (1987) VAT decision 2347

<sup>76</sup> Paragraph 6.4, Public Notice 741A, January 2010; see for example *Brodrick Wright & Strong Ltd v C & E Comrs* (1987) VTD 2347; VATPOSS07600

<sup>77</sup> Revenue & Customs Brief 22/12

<sup>78</sup> Regulation 1042/2013 (ref Art 31a 2(f))

<sup>79</sup> Paragraph 6.4, Public Notice 741A, January 2010; VATPOSS07600

<sup>80</sup> These services arguably do not relate to specific property, but the wider environment, and specific property is not a central and essential element of the service

<sup>81</sup> Even where an element of the work may involve the topography of the sea bed, the focus of the services does not relate to specific property

<sup>82</sup> Revenue & Customs Brief 22/12

<sup>83</sup> Regulation 1042/2013 (ref Art 31a 2(a))

<sup>84</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 3(a))

<sup>85</sup> Paragraph 15.5.8, Public Notice 741A, January 2010

<sup>86</sup> Revenue & Customs Brief 22/12

<sup>87</sup> Regulation 1042/2013 (ref Art 31a 2(g))

<sup>88</sup> Paragraph 6.5.1, Public Notice 741A, January 2010; VATPOSS07700

<sup>89</sup> Paragraph 6.5, Public Notice 741A, January 2010; VATPOSS07600

<sup>90</sup> Paragraph 6.5, Public Notice 741A, January 2010; VATPOSS07700

## PROFESSIONAL OR INTANGIBLE SERVICES SUPPLIED BY OTHER PROFESSIONALS

Description of supply	Connected to land?		Agreed by CIOT?
	Yes	No	
53. Legal services such as conveyancing and drawing up of contracts of sale or leases <sup>91</sup> dealing with applications for planning permission <sup>92</sup> or otherwise arranging the sale or lease of land or property <sup>93</sup> even if the underlying transaction resulting in the legal alteration of the property is not carried through. <sup>94</sup>	Y		Y <sup>95</sup>
54. Legal services regarding a claim of ownership over a particular piece of land or property. <sup>96</sup>	Y		Y <sup>97</sup>
55. Legal services connected to contracts, including advice given on the terms of a contract to transfer immovable property, or to enforce such a contract, or to prove the existence of such a contract, where such services are not specific to the negotiation or agreement to transfer a title on an immovable property. <sup>98</sup>		N	Y <sup>99</sup>
56. Property management services consisting in the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property <sup>100</sup> , which may comprise a package of services including rent collection, arranging repairs and the maintenance / preparation of accounts <sup>101</sup>	Y		Y <sup>102</sup>
57. Portfolio management of investments in property <sup>103</sup> , where strategic decisions are taken regarding purchases and sales of property.		N	Y <sup>104</sup>
58. The legal administration of a deceased person's estate which happens to include property. <sup>105</sup>		N	Y <sup>106</sup>
59. Services of an accountant in simply calculating a tax return from figures provided by a client, even where those figures relate to rental income. <sup>107</sup>		N	Y <sup>108</sup>
60. Accountancy services relating to the letting of property.		N <sup>109</sup>	Y <sup>110</sup>
61. Rent collection services. <sup>111</sup>	Y		N <sup>112</sup>

<sup>91</sup> Revenue & Customs Brief 22/12

<sup>92</sup> Paragraph 6.4, Public Notice 741A, January 2010; VATPOSS07600

<sup>93</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 2(p))

<sup>94</sup> Regulation 1042/2013 (ref Art 31a 2(q))

<sup>95</sup> Such services have as their object the legal alteration of specific property.

<sup>96</sup> Paragraph 15.5.7, Public Notice 741A, January 2010; *Daunter v Revenue and Customs Commissioners* (2007) VTD 20120.

<sup>97</sup> Such services have as their object the legal alteration of specific property.

<sup>98</sup> Regulation 1042/2013 (ref Art 31a 3(h))

<sup>99</sup> Such services are more general in nature and do not have as their object the legal alteration of specific property

<sup>100</sup> Regulation 1042/2013 (ref Art 31a 2(o))

<sup>101</sup> Paragraph 6.4, Public Notice 741A, January 2010; *Aspen Advisory Services Ltd v C & E Comrs* (1995) VTD 13489; VATPOSS07600 – presumably only where there is a composite supply of property management services and the accounting etc services are ancillary

<sup>102</sup> Such services have as their object the legal alteration of specific property, and could be construed as estate agents specifically mentioned in Article 47 of the VAT Directive

<sup>103</sup> Revenue & Customs Brief 22/12; Regulation 1042/2013 (ref Art 31a 3(g)); see for example *American Express Services Europe Ltd v Revenue and Customs Commissioners* [2010] STC 1023

<sup>104</sup> Such services do not have as their object the legal alteration of specific property; rather they represent investment decisions in properties, so we would also consider investment advice etc relating to a single property as not related to land

<sup>105</sup> Paragraph 6.5.1, Public Notice 741A, January 2010; VATPOSS07700

<sup>106</sup> The property services are ancillary to the other services provided which do not have as their object the legal alteration of specific property

<sup>107</sup> Paragraph 6.5.1, Public Notice 741A, January 2010; VATPOSS07700

<sup>108</sup> The property services are ancillary to the other services provided which do not have as their object the legal alteration of specific property

<sup>109</sup> HMRC has confirmed that, notwithstanding their guidance in VATPOSS07600 (which at 30 June 2014 still includes these as land related services), they agree that such services are not land-related

<sup>110</sup> Accountancy services, even if calculating rental income from properties or preparing or auditing service charge accounts, do not have as their object the legal alteration of specific property

<sup>111</sup> Assumed to be one of the five property specific services in *Aspen Advisory Services Ltd v C & E Comrs* (1995) VTD 13489

<sup>112</sup> HMRC's view is that rent collection is a service which has specific property as a central and essential element of the service and so is land related. The CIOT takes the view that the rent arises from the supply of the property. Mere collection of the debt

62. Preparation of accounts / tax computations for individuals or a property rental business with only UK properties. <sup>113</sup>		N	Y <sup>114</sup>
63. Submission of an option to tax over land or buildings.		N	Y <sup>115</sup>
64. The VAT registration of a property investment company.		N	Y <sup>116</sup>
65. Provision of SDLT, capital allowances, VAT advice etc in relation to the acquisition, disposal or letting of a particular site or property.		N	Y <sup>117</sup>
66. Provision of general SDLT, capital allowances, VAT advice etc not relating to a particular site or property, or where the property element is incidental to the advice.		N	Y <sup>118</sup>
67. Provision of advice to a lender (eg advice on rental / business potential, not valuation) in relation to a proposed property transaction.		N	Y <sup>119</sup>
68. Services of an insolvency practitioner, whether acting as an Administrator, Receiver or in another capacity.		N	Y
69. Services of an LPA Receiver.		N	Y <sup>120</sup>
70. Feasibility studies assessing business potential in a geographic area (which do not relate to a specific property or site). <sup>121</sup>		N	Y <sup>122</sup>
71. Supplies of e-versions of pre-existing maps etc.		N	Y <sup>123</sup>
72. Insurance of property <sup>124</sup> except where recharged as part of a service charge / additional rent in respect of a specific property.		N	Y
73. Insurance of property where recharged as part of a service charge / additional rent in respect of a specific property.	Y		Y <sup>125</sup>

is debt collection and so not a land related service. However, the CIOT recognises that the term 'rent collection' may be a loose term that in reality is not pure debt collection and so might be a land related service (see item 66). However, it is important in all cases to have regard to what the principal aim of the service is.

<sup>113</sup> *W H Payne & Co* (1995) VTD 13668

<sup>114</sup> Accountancy services do not have as their object the legal alteration of specific property, or the property as a central and essential element of the supply

<sup>115</sup> Whilst this may relate to a specific property, it does not have as its object the legal alteration of the property, or the property as a central and essential element of the supply

<sup>116</sup> This is an obligation of the company and does not have as its object the legal alteration of the property

<sup>117</sup> Whilst this may relate to a specific property, it does not have as its object the legal alteration of the property, or the property as a central and essential element of the supply

<sup>118</sup> This is general advice, not related to a specific property (irrespective of whether specific property would make the supply connected with land in the first place)

<sup>119</sup> Whilst valuation of a property may be connected with land, other services are one-step-removed from that, and do not have as their object the legal alteration of specific property

<sup>120</sup> Whilst LPA Receivers are appointed in relation to specific property, we consider that their services are one step removed from the actual professional services which are connected with land (such as estate agents etc)

<sup>121</sup> Paragraph 6.5.1, Public Notice 741A, January 2010; VATPOSS07700

<sup>122</sup> Such services do not have as their object the legal alteration of specific property; rather they represent business decisions

<sup>123</sup> Is generally available, therefore not connected to land

<sup>124</sup> VATPOSS07700

<sup>125</sup> If it is insurance over a specific property, and recharged as a service charge / additional rent in respect of a property, we cannot see why it is not connected with land.

## **EXTRACTS FROM RELEVANT LEGISLATION**

### **Article 47, The Principal VAT Directive**

*Supply of services connected with immovable property*

*Article 47*

*The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.*

### **Schedule 4A to the VAT Act 1994**

*Part 1 General Exceptions*

*Services relating to land*

*1—*

- (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the land in connection with which the supply is made is situated.*
- (2) This paragraph applies to—*
- (a) the grant, assignment or surrender of any interest in or right over land,*
  - (b) the grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land,*
  - (c) the grant, assignment or surrender of a license to occupy land or any other contractual right exercisable over or in relation to land (including the provision of holiday accommodation, seasonal pitches for caravans and facilities at caravan parks for persons for whom such pitches are provided and pitches for tents and camping facilities),*
  - (d) the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering,*
  - (e) any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work, and*
  - (f) services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to land.*
- (3) In sub-paragraph (2)(c) ‘holiday accommodation’ includes any accommodation in a building, hut (including a beach hut or chalet), caravan, houseboat or tent which is advertised or held out as holiday accommodation or as suitable for holiday or leisure use.*

(4) In sub-paragraph (2)(d) 'similar establishment' includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by, or held out as being suitable for use by, visitors or travelers.

## **COUNCIL IMPLEMENTING REGULATION 1042/13 (Land elements take effect 1 January 2017)**

Amending Implementing Regulation (EU) 282/2011 as regards the place of supply of services

Article 13b

For the application of Directive 2006/112/EC, the following shall be regarded as 'immovable property':

(a) any specific part of the earth, on or below its surface, over which title and possession can be created;

(b) any building or construction fixed to or in the ground above or below sea level which cannot be easily dismantled or moved;

(c) any item that has been installed and makes up an integral part of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts;

(d) any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction.;

### **'Subsection 6a**

#### **Supply of services connected with immovable property**

Article 31a

1. Services connected with immovable property, as referred to in Article 47 of Directive 2006/112/EC, shall include only those services that have a sufficiently direct connection with that property. Services shall be regarded as having a sufficiently direct connection with immovable property in the following cases:

(a) where they are derived from an immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services supplied; [or]<sup>126</sup>

(b) where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.

2. Paragraph 1 shall cover, in particular, the following:

(a) the drawing up of plans for a building or parts of a building designated for a particular plot of land regardless of whether or not the building is erected;

(b) the provision of on-site supervision or security services;

(c) the construction of a building on land, as well as construction and demolition work performed on a building or parts of a building;

(d) the construction of permanent structures on land, as well as construction and demolition work performed on permanent structures such as pipeline systems for gas, water, sewerage and the like;

(e) work on land, including agricultural services such as tillage, sowing, watering and fertilisation;

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<sup>126</sup> HMRC consider that (a) and (b) are not cumulative provisions, which appears correct

*(f) surveying and assessment of the risk and integrity of immovable property;*

*(g) the valuation of immovable property, including where such service is needed for insurance purposes, to determine the value of a property as collateral for a loan or to assess risk and damages in disputes;*

*(h) the leasing or letting of immovable property other than that covered by point (c) of paragraph 3, including the storage of goods for which a specific part of the property is assigned for the exclusive use of the customer;*

*(i) the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, including the right to stay in a specific place resulting from the conversion of timeshare usage rights and the like;*

*(j) the assignment or transfer of rights other than those covered by points (h) and (i) to use the whole or parts of an immovable property, including the licence to use part of a property, such as the granting of fishing and hunting rights or access to lounges in airports, or the use of an infrastructure for which tolls are charged, such as a bridge or tunnel;*

*(k) the maintenance, renovation and repair of a building or parts of a building, including work such as cleaning, tiling, papering and parqueting;*

*(l) the maintenance, renovation and repair of permanent structures such as pipeline systems for gas, water, sewerage and the like;*

*(m) the installation or assembly of machines or equipment which, upon installation or assembly, qualify as immovable property;*

*(n) the maintenance and repair, inspection and supervision of machines or equipment if those machines or equipment qualify as immovable property;*

*(o) property management other than portfolio management of investments in real estate covered by point (g) of paragraph 3, consisting of the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property;*

*(p) intermediation in the sale, leasing or letting of immovable property and in the establishment or transfer of certain interests in immovable property or rights in rem over immovable property (whether or not treated as tangible property), other than intermediation covered by point (d) of paragraph 3;*

*(q) legal services relating to the transfer of a title to immovable property, to the establishment or transfer of certain interests in immovable property or rights in rem over immovable property (whether or not treated as tangible property), such as notary work, or to the drawing up of a contract to sell or acquire immovable property, even if the underlying transaction resulting in the legal alteration of the property is not carried through.*

*3. Paragraph 1 shall not cover the following:*

*(a) the drawing up of plans for a building or parts of a building if not designated for a particular plot of land;*

*(b) the storage of goods in an immovable property if no specific part of the immovable property is assigned for the exclusive use of the customer;*

*(c) the provision of advertising, even if it involves the use of immovable property;*

*(d) intermediation in the provision of hotel accommodation or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, if the intermediary is acting in the name and on behalf of another person;*

*(e) the provision of a stand location at a fair or exhibition site together with other related services to enable the exhibitor to display items, such as the design of the stand, transport and storage of the items, the provision of machines, cable laying, insurance and advertising;*

*(f) the installation or assembly, the maintenance and repair, the inspection or the supervision of machines or equipment which is not, or does not become, part of the immovable property;*

*(g) portfolio management of investments in real estate;*

*(h) legal services other than those covered by point (q) of paragraph 2, connected to contracts, including advice given on the terms of a contract to transfer immovable property, or to enforce such a contract, or to prove the existence of such a contract, where such services are not specific to a transfer of a title on an immovable property.*

#### **Article 31b**

*Where equipment is put at the disposal of a customer with a view to carrying out work on immovable property, that transaction shall only be a supply of services connected with immovable property if the supplier assumes responsibility for the execution of the work.*

*A supplier who provides the customer with equipment together with sufficient staff for its operation with a view to carrying out work shall be presumed to have assumed responsibility for the execution of that work. The presumption that the supplier has the responsibility for the execution of the work may be rebutted by any relevant means in fact or law.*

#### **Article 31c**

*For the purpose of determining the place of supply of telecommunications, broadcasting or electronically supplied services provided by a taxable person acting in his own name together with accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, those services shall be regarded as being supplied at those locations.'*

*It shall apply from 1 January 2015*

*However, Articles 13b, 31a and 31b shall apply from 1 January 2017.*

### **Extract from Revenue & Customs Brief 22/12**

#### *What do we mean by land?*

*For the purpose of determining the place of supply, land means any:*

- specific part of the earth, on, above or below its surface, over which title or possession can be created*
- building or construction fixed to or in the ground above or below sea level which cannot be easily dismantled or moved*
- item making up part of a building or construction and without which it is incomplete (such as doors, windows, roofs, staircases and lifts)*
- item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction*

#### *When is a service related to land?*

*In order for a service to be land related for determining the place of supply it must have a **sufficiently direct connection** with a **specific piece of land**.*

*This will include services:*

- *derived from land and **where the land is a central and essential part of the service***
- *intended to legally or physically alter a property*