a main residence relief claim.

The trust has only ever had the property and an offshore sterling bank account, so until the distribution *in specie* there have not been any s87, TCGA 1992 gains accruing within the trust. Since main residence relief is only available from 17 December 2007, a gain will be realised on the property and attributed in full to the life tenant.

However, because the para 126, Sch 7, FA 2008 election has been submitted there will be no taxable gain chargeable on the life tenant. This is because when the formula A/B is applied to the gain, the A figure will be nil (as main residence relief applies for the whole period since 6 April 2008) so that the taxable gain reduces to nil.

**Contributed by Lynnette Bober**

## VAT

### 95. MIXED AND SEPARATE SUPPLIES: TAXPAYER WINS

A recent First-tier Tribunal case on VAT mixed supplies resulted in an important win for the taxpayer.

In *Envoygate (Installations) Ltd v HMRC* TC03361, the company had two main sources of income:

- manufacture and installation of sash windows to residential properties, subject to 20% VAT;
- manufacture and installation of draught stripping for the windows in residential properties, subject to 5% VAT as an energy-saving material.

Although the customer had the choice of ordering the windows or draught stripping on a stand-alone basis, HMRC took the view that an order for both represented a single supply of sash windows, ie, all subject to 20% VAT. This conclusion was reached despite the fact that there were separate pricing arrangements (the draught stripping supply tended to be about 50% of the cost of the replacement windows), separate brochures to promote the different services of windows/draught stripping and also separate invoicing. HMRC felt it would be artificial to separate the supplies.

The taxpayer's appeal was successful. The tribunal accepted that there were two separate supplies at different rates of VAT and an output tax split was appropriate. To quote from the judgement:

"Physically the customer receives, and has fitted separately, two distinct items, the replacement window and the draught stripping. Neither is, as to its nature, features or its function, dependent upon the other."

It is surprising that this case reached the courts - and it shows that the courts often do not agree HMRC's approach to this difficult subject. Exactly 15 years after the landmark *Card Protection Plan Ltd* case in the European Courts (C-349/96), which was supposed to clear the cloudy waters, the principles of single or multiple supplies are still causing confusion. Deciding on what VAT treatment to adopt requires great care and a full consideration of all relevant facts.

**Contributed by Neil Warren**

### 96. IS BELLY DANCING A SUPPLY OF EDUCATION?

A recent case tested the definition of what constitutes an exempt VAT supply of education services under Group 6, Sch 9, VAT Act 1994 (VATA 1994). This provides an exemption from VAT for those making supplies of education services, provided that these subjects are ordinarily taught in schools or universities. This means that there are, at the moment, many self-employed teachers claiming a VAT exemption on the strength of this ruling.

However, to achieve the exemption there must be some evidence that the subject is taught in at least some UK schools or universities on a regular basis. The definition at Item 2, Group 6, Sch 9 is: "The supply of private tuition, in a subject ordinarily taught in a school or university, by an individual teacher acting independently of an employer". In *Audrey Cheruvier trading as Fleur Estelle Dance School v HMRC* TC03148 the taxpayer failed to achieve exemption.

Ms Cheruvier has a dancing school and six self-employed teachers of belly dancing. She argued that she offered a serious course of study in a particular dance form and this was equivalent to dance taught in school and universities.

HMRC argued that there was no evidence that belly dancing was taught as required by VATA 1994. The taxpayer could not show that belly dancing formed a component of any course taught at either school or university.

The First-tier Tribunal concluded that belly dancing did not form part of any course taught at either type of educational establishment and thus dismissed the application for exemption from VAT.

This case shows the scope for error in applying the rules for VAT exemption for supplies of education. There are some taxpayers not utilising the exemption and some claiming it when they should not. An example of the former is riding lessons, which can qualify as an exempt supply, as evidence that this subject is taught in schools has already been obtained, and yet certain yards still charge VAT on their services. Other activities, such as belly dancing, cannot have the exemption due to lack of evidence that they are qualifying, and yet services are still provided free of VAT.

The key to claiming the VAT exemption for the professional adviser is to obtain evidence that the supply qualifies, ie, proof that the subject is ordinarily taught in schools,

for example, so that the VAT treatment would survive scrutiny in a tribunal.

**Contributed by Julie Butler, Butler & Co**