The Chartered Tax Adviser Examination

November 2008

PAPER IID

INDIRECT TAXATION

Suggested Answers (without marks)

Where candidates are required to comment on tax (and in particular CGT) which may apply in 2008/09 and subsequent years they will be given full credit whether they assume that 2007/08 rates (including taper relief) continue to apply or whether they answer using 2008/09 rates (including entrepreneurs relief).

Question 1

Aggregates Levy and Landfill Tax implications of construction

1. Aggregates Levy will be due at £1.95 a tonne (£1.60 a tonne per 07/08 rates) on the aggregate from the site used to make concrete. The aggregate will be liable to Aggregates Levy when it is commercially exploited which is when it is mixed with the cement under FA 2001 s 19(1) (d).
2. Ensure the client notifies HMRC of his liability to register within 30 days of commercially exploiting the aggregate or forming an intention to do so. (SI 2001/4027 reg 2(7) – also Para 1,Sch 4, Fa 2001) He must also register the site and care must be taken on setting the boundaries of the site with regard to issues discussed in point 4 below.
3. Aggregate removed from the ground in the course of excavating and installing the pipes to feed the water to the generating plant should be exempt from Aggregates Levy under FA 2001 S 17(3) (b).
4. Providing the aggregate is not mixed with anything other than water, when it is used to create access roads, then it is regarded as being returned to the land at the same site it originated from in the same state it was won. This is not taxable as there is no 'commercial exploitation' (FA 2001 19 (3)(e)) but the client must be careful that these roads are only created within the boundary of the registered site.
5. Disposing of excess aggregate off the originating site as waste is relieved from Aggregates Levy under FA 2001 s 30 (1) (d). The relief is provided by means of a credit which can be claimed in the Aggregates Levy account at the time the supply is made (if it is already known that the aggregate is to be disposed of). If Aggregates Levy has already been charged then a credit can be reclaimed in relation to the quantity disposed of for up to three years from the date of the payment of the tax.
6. Disposing of this aggregate would usually be subject to Landfill Tax, however the client is planning to dispose of it by filling up a quarry he owns. There is an exemption from Landfill tax under FA 1996 s.44A for disposals made at a qualifying landfill site that is or was a quarry. The client needs to ensure that planning consent exists for filling the quarry and it is not an 'old quarry' under this legislation.
7. One area which does also need to be considered is whether or not the client is engaged in a business such that there is commercial exploitation of the aggregate within s.19(3) FA 2001

Climate Change Levy issues

Will the plant qualify for Levy Exemption Certificates?

There is an exemption from Climate Change Levy for energy supplied from renewable sources under FA 2000 Sch 6 para 19. Suppliers support this exemption by ensuring they match the supplies made under renewable source contracts to energy purchased, with associated Levy Exemption Certificates that evidence the quantity of qualifying power purchased from a qualifying generator.

Hydroelectric power is included as an eligible source as long as it is 'small-scale hydro' which is defined as up to ten Megawatts (SI 2001/838 reg 47). Hence, this project should be able to apply and receive Levy Exemption Certificates for the power generated from the plant as it is planned to be an eight Megawatt plant.

Process for obtaining Levy Exemption Certificates

The client will need to apply for accreditation from OFGEM for the new plant. Once accredited their monthly generation data will be collected and checked by OFGEM and then Levy Exemption Certificates for the monthly qualifying output issued to the client.

Initially, the client will also need to notify HMRC in writing, per FA 2000 Sch 6 para 19 (1)(d), that the conditions imposed by the legislation for this exemption from Climate Change Levy will be fulfilled by the client as far as they apply to him. These conditions will include the supply of information and the inspection of records by OFGEM and HMRC.

Monthly qualifying output subject to Levy Exemption Certificates

The client mentioned that they may be using pumping to artificially influence the flow rate, height or pressure of the water. In SI 2001/838 reg 47 (13) it mentions that if this is done then renewable source electricity generated by the station will be calculated after deducting any electricity which has not been generated from renewable sources which is used for such pumping.

Question 2

To: Wendy North
From: VAT adviser
Date: x November 2008
Subject: VAT Disclosure Regime

VAT DISCLOSURE REGIME

Taxpayers who are party to certain VAT avoidance schemes must disclose their use to HM Revenue & Customs (HMRC). The measures are designed to provide greater information to HMRC about the take-up of avoidance schemes of which they are already aware and early notice of new, potentially damaging schemes. HMRC must be notified of the use of a hallmarked scheme either at the e-mail or postal address specified in the official VAT Notice 700/8. HMRC will acknowledge notifications received.

If all the required information is not received, the taxable person will be asked to provide it. If this information is not supplied within the time limit for making a notification (see above), the taxable person will be liable to a penalty.

There are two categories of scheme that must be notified.

Listed schemes

Certain schemes are 'designated' or listed schemes for these purposes and are prescribed in the law. A business whose annual turnover exceeds **£600,000** must notify HMRC if it makes a VAT return or claim (such as a voluntary declaration) which is affected by its use of a listed scheme.

Hallmarked schemes

Certain features that are regularly associated with avoidance schemes are designated in the law. These features can relate to the adoption of schemes or be components of them. Hallmarked schemes are those schemes that include at least **one** of the designated provisions. A business whose annual turnover exceeds **£10 million** must notify HMRC if:

- it has entered into a scheme with **the main or one of the main** purposes of securing a **tax advantage**
- the scheme contains one or more of the hallmarks of avoidance, **AND**
- it makes a return or claim which is affected by the use of the hallmarked scheme.

There is also a voluntary facility for anyone, including those who devise and market avoidance schemes, to register hallmarked schemes.

Failure to notify a listed scheme incurs a penalty of 15% of the VAT avoided. Failure to notify a hallmarked scheme incurs a flat-rate penalty of £5,000.

What is a tax advantage?

Broadly, a taxable person obtains a tax advantage if the VAT he accounts for to HMRC or pays to third parties is less than it would have been had he not used the scheme or arrangement in question. HMRC also sees as a tax advantage any arrangement whereby the time between a taxable person recovering VAT from HMRC and another taxable person paying the same VAT over to HMRC is longer than it otherwise would have been.

Is a tax advantage a main purpose of the scheme?

There is no one factor that determines whether the obtaining of a tax advantage is the main, or one of the main, purposes of a scheme. HMRC's view is that all circumstances need to be taken into consideration including

- the overall objectives of the arrangements and transactions (including the objectives of any wider corporate or VAT group to which the parties to the scheme belong and the objectives of any persons or businesses who control the parties); and
- whether the introduction of any unnecessary, complex or costly steps would have taken place were it not for the tax advantage that can be obtained.

In general, it is likely that the main purpose test would be met where, were it not for any VAT advantage arising, either the arrangements would not have been implemented or would have been implemented in a different manner. Similarly, where there are two or more ways of carrying out a genuine commercial objective and the choice is determined on grounds **other than** the potential VAT saving, it is unlikely the main purpose test would be met, even though a VAT advantage arises when compared to adopting one or more of the alternatives.

HMRC are normally prepared to give a ruling on how transactions should be treated for VAT and have recently undertaken to do so within 30 days. However, they will not approve tax planning arrangements and will refuse to give rulings where they suspect that the transactions are part of a tax avoidance scheme.

Time limits

Where a taxable person must notify HMRC of the use of a listed or a hallmarked scheme, he must do so within **30 days** from the end of:

- the last day for submission of the return for the 'affected VAT return period';
- the date the 'affected claim' is made; or
- where HMRC make a direction to prevent artificial splitting of business, the last day for submission of the first VAT return made to HMRC following the direction.

Young Ltd

There are several criteria that must be fulfilled before the arrangement must be disclosed.

Firstly you will need to confirm the turnover of the chain exceeds £600,000. If not, then no disclosure is required. It is irrelevant for the listed schemes whether there was any tax avoidance motive. If a scheme matches the description it must be disclosed to HMRC.

The terms of the Leaseback Agreement listed scheme require that there is a leasing of goods by a taxable person to a connected relevant person where input tax credit is available on the purchase of the goods, the relevant person uses the goods for his business, and the relevant person or a person connected with him has directly or indirectly provided funds for meeting more than 90% of the cost of the goods.

Although Cesar Ltd is owned by Mr West's son, it is not "connected" for these purposes. The test is in SI 2004/1933 and requires companies to be in the same corporate group in order to be connected. This would require one company to own the other or for both to be owned by the same company. As this is not the case, the statutory description is not met and the scheme does not fall to be disclosed.

Sparrow Plc

Here there is a sharing of the tax advantage with the promoter of the scheme as well as an off-shore loop whereby a service is provided to a person outside the EU but is then used in making a supply to a UK entity which is treated as made outside the UK. Both of these are hallmarks of disclosable schemes.

The turnover of the taxpayer is at the £10 million threshold and it seems clear that tax avoidance was the main purpose of the arrangements.

A provision is treated as fitting a description listed even if it, or any feature of it, is not actually present (whether as a matter of law or for any other reason), provided a taxable person has treated that feature as being present for the purpose of making a VAT return or a claim for the repayment of output tax or an increase in credit for input tax.

The fact that the arrangements do not achieve a VAT saving is not therefore in itself relevant to the requirement to disclose. In this case the sharing of the tax advantage and the main motive of tax avoidance serves to bring the scheme within the provisions regardless of the details of the arrangements. I would therefore advise it be disclosed to preclude the possibility of a later penalty.

Question 3

File note to: Tax Partner
Client: Green Landfill Ltd
Subject: landfill Tax Credits
Date: 4 November 2008

Conditions for a Claim

The Landfill Communities Fund (sometimes known as the Landfill Tax Credit Scheme or the Environmental Bodies Credit Scheme) allows registered landfill site operators to claim a credit against landfill tax payments in respect of financial contributions made to an approved environmental body. The scheme is administered by ENTRUST, a not-for-profit company appointed by HM Revenue & Customs. The legislation is contained in Finance Act 1996 ss 51 and 53 and the Landfill Tax Regulations 1996 (SI 1996/1527) Regs 30 to 36. References in this memo are to those regulations.

A credit can be claimed in respect of qualifying contributions made to approved environmental bodies. ENTRUST approves applications and publishes a list of enrolled organisations. An approved body does not have to be a registered charity but must be non-profit making. Both organisations appear to satisfy this condition. There are also rules concerning control of the body. (Regs 31 & 33)

The objects of a body must however also be approved. The provision of a public park in the vicinity of a landfill site may qualify as an approved object provided it is not required under a relevant planning condition. A distance of two miles is accepted as within the vicinity for these purposes. A contribution to this project could qualify for credit therefore. However the general promotion of recycling is not an approved object and no claim could be made in these circumstances. (Reg 33)

Claim Procedure

The client should check whether the organisation undertaking the park project is or will be enrolled for the purpose of receiving contributions. If so and a contribution is made, the client must record the date and amount of the payment and the name and enrolment number of the environmental body. (Reg 32)

The contribution must also be made subject to a written condition that the environmental body will only spend the contribution on approved objects.

HM Revenue & Customs are able to recover landfill tax credits if the body does not spend the contributed funds on approved objects (Reg 36). The client should therefore take reasonable precautions to ensure that its contribution is properly spent. This might include requiring progress reports or possibly representation on the board of the body or setting up a joint signatory account.

Calculation and method of claim

Credit can be claimed for 90% of the qualifying contribution, which in this case would be £27,000 (£30,000 x 90%). (Reg 31 (2)).

This is subject to a maximum of 6 % of the company's landfill tax liability for the period from 1 April 2008 to 31 March 2009. This claim would be within the maximum amount of credit that could be claimed which would be £90,000 (£1.5 million x 6%). (Reg 31(3))

Credit can be claimed on the landfill tax return covering the period in which the contribution is paid. However credit can also be claimed on a return for a contribution made after the end of the return period but before the due date for submission of the return. Therefore provided the contribution is made by 30 April 2009, credit can be claimed on the return for period ended 31 March 2009. Reg 31(2))

The credit should be entered in box 5 of the landfill tax return. The enrolment number of the environmental body and the amount of the contribution should also be entered on the reverse of the return.

Summary

Landfill Tax Credit may be available in respect of a contribution to the public park project subject to the environmental body being enrolled with ENTRUST and both parties complying with the scheme rules. The amount of potential credit would be £27,000.

Question 4

1 *Partial Exemption Calculation for period 03/08*

Input tax directly related to taxable supplies £503,000

Residual input tax (Leeds property + overheads) £41,000

Input tax on the Leeds property cannot be treated as directly attributable to taxable or exempt supplies and must be treated as residual.

Standard method calculation

Taxable supplies	5,620,000	= 90.35%
Total supplies	6,220,000	

(Taxable supplies include UK, EU and non-EU sales)

Round up to 91% (Total residual input tax less than £400,000 per month)

Residual input tax £41,000 x 91% = £37,310

Recoverable input tax

	£
Input tax directly related to taxable supplies	503,000
Proportion of residual input tax related to taxable supplies	37,310
Total recoverable input tax	540,310

2 Adjustments

(a) Partial Exemption Annual Adjustment

			£
Input tax directly related to taxable supplies			1,899,000
Residual input tax			135,000
Annual adjustment calculation			
Annual taxable supplies	19,627,000 =	89.1 %	
Total annual supplies	22,027,000		
Round up to		90 %	
Residual input tax	£135,000 x 90%	= £121,500	
Input tax directly related to taxable supplies			1,899,000
Proportion of residual input tax related to taxable supplies			121,500
Total recoverable input tax			2,020,500

	£
Provisional input tax claims	518,480
	456,900
	504,280
	540,310
	2,019,970

Adjustment

An additional amount of £530 (£2,020,500 – £2,019,970) is reclaimable in VAT period 06/08.

Consideration should be given as to whether a partial exemption override adjustment is necessary in respect of input tax incurred on the Leeds property. The standard method produces a recovery of 90% whilst an attribution based on use is likely to produce a recovery of 50%. However since the difference is not substantial (not more than £50,000 nor 50% of residual input tax), no adjustment is necessary.

(b) Sale of Factory

The factory is a capital items scheme item. Its exempt sale will give rise to a repayment of input tax claimed.

The original amount of VAT claimed would have been £481,250 and the asset has been used for fully taxable purposes for 8 intervals. The remaining two intervals following sale will be treated as exempt use.

The extra clawback of input tax in reg.115 (3A) and (3B) will not apply because the sale meets the conditions set out in Business Brief 30/97.

The amount of input tax repayable is

$$\frac{481{,}250}{10} = 48{,}125 \times 2 = \quad £96{,}250$$

£96,250 will be repayable to HMR&C on return for period 09/08.

The disposal proceeds should be excluded from the standard method residual calculation since it is a capital asset of the business.

3 Contract in France

The place of supply of this contract will be France. Input tax incurred in the UK will nonetheless be reclaimable since the supplies would be taxable if made in the UK. The attribution must be made separately from and before the standard method calculation.

The amount of directly attributable and residual input tax needs to be established based on use. Values of outputs can be used as a proxy for use provided this produces a fair and reasonable result.

It may be possible to agree with HM Revenue & Customs a method using a single calculation including the out of country supplies.

Question 5

Tax Adviser and Co
1 Main Street Newtown
NT1 1AA

Mr R Red
Finance Director
AN Internet Supplies Ltd
12 Sports Lane
Wolverhampton WV 13 2NJ

4 November 2008

Dear Mr Red

VAT Implications of proposed new internet venture

Thank you for your letter setting out the details of your planned internet sales arrangements. I have set out the VAT consequences of the proposed structure below.

P Ltd

P Ltd will be required to register for VAT from the commencement of trading since it seems very likely that it will expect to exceed the current VAT registration limit of £67,000 in its first thirty days. In any case it is also likely to exceed the registration limits for acquisition of goods in the UK (see below).

It may be advantageous to register the company for VAT even before it commences trading to allow it to recover VAT incurred on start up costs as it goes along. This is known as an intending trader registration and HM Revenue & Customs will require objective evidence of your intention to make taxable supplies i.e. future sales to R. When the company registers, it will also be able to reclaim VAT on services purchased in the six months prior to date of registration and on goods on hand at date of registration.

Goods delivered from Portugal and Italy will be subject to VAT on acquisition in the UK. P Ltd must account for UK VAT on its VAT return on the value of these goods but since it will supply them to customers, P can also reclaim this VAT as input tax on the same VAT return.

Goods that qualify as children's clothing will not be subject to VAT on acquisition in the UK. We can provide further information concerning the definition of children's clothing if required.

P Ltd will have to account for acquisition VAT according to the date of the supplier's invoice or at the 15th day of the month following that in which the goods were removed if earlier. The value will have to be converted into sterling at the market-selling rate for the euro at the time of the acquisition. However it is possible to use the period rate of exchange published by HM Revenue & Customs or agree the use of a commercial rate in writing with HM Revenue & Customs.

P Ltd will also be required to complete supplementary declarations under the INTRASTAT system for trade statistical purposes.

VAT will be payable on the sale of goods to R Ltd unless any of the items qualify for zero-rating as children's clothing. The VAT charge normally arises on the date of the supply of the goods unless a VAT invoice is issued within 14 days of the sale, in which case the VAT becomes payable according to the date of the invoice. However it is possible to agree monthly VAT invoicing with HM Revenue & Customs that will fit with your accounting arrangements. VAT will then be chargeable at the date of your monthly invoice.

R Ltd

R Ltd will also need to register for VAT since it seems certain also that its turnover in the first 30 days will exceed the VAT registration limits.

Similarly R Ltd should consider intending trader registration in advance of trading as described above.

Sales to customers in the US will not be subject to VAT provided R Ltd retains appropriate evidence of the export from the UK

Sales to customers in the UK, Holland and France will subject to VAT at 17.5%. Clothing that qualifies as children's clothing will be zero-rated and no VAT chargeable

Delivery charges will be subject to VAT at the same rate as the clothing.

It is not strictly necessary to issue full VAT invoices for sales to retail customers. Issuing a VAT invoice is fine however if it otherwise suits your accounting arrangements and since despatch of goods, payment and issue of invoice will occur at broadly the same time, this will not affect the time at which VAT becomes chargeable. Invoices in Euros will have to be converted into sterling on a similar basis to P Ltd's acquisitions.

The fact that the company offers a refund if the customer is not satisfied or that the customer has a right to return the goods under consumer law governing internet sales does not alter the fact that VAT will still be payable at the time of sale of the clothing.

R Ltd will also have to take account of the distance selling rules. Once sales to customers in France and Holland exceed a particular level, it will be necessary for R Ltd to register for VAT in those countries. It will then be no longer necessary to charge UK VAT but VAT paid on UK purchases can continue to be reclaimed. However R may opt to account for VAT in the customer's state from commencement of trade if it wishes. This would avoid later changes to web site design.

Other Matters

It would be possible to register both P Ltd and R Ltd in a VAT group registration. The companies would share a single VAT number and make one consolidated VAT return. This would remove the need to charge VAT on supplies from P to R.

However in a VAT group registration the companies would have a joint and several liability for VAT payable by the group. In addition, depending of the volume of sales to customers outside the UK, it is possible that VAT paid by R on purchases from P will exceed VAT charged on sales. In this case it might be preferable for P to be registered for VAT separately in order to claim monthly repayments of VAT.

Please let me know if you need any further information on any of the above matters.

Yours sincerely

T Adviser

Question 6

Internal Memorandum

From: T Adviser
To: A Partner
Date: 5 November 2008
Subject: Green Ltd Taxation

GREEN LTD – LIABILITY OF COMPANIES HELD BY GREEN LTD

Any company which is **resident** in the UK is chargeable to corporation tax in respect of all its 'profits' (income and chargeable gains) wherever arising.

There is no general statutory definition of residence, and instead case law determined that a company resides where its real business is carried on, i.e. where its **central management and control** actually abide (cf. De Beers Consolidated Mines Ltd v Howe HL 1906).

This means that it is necessary firstly to ascertain **whether** the directors in fact themselves exercise central management and control; if so, to determine **where** that central management and control is exercised (not necessarily where the directors meet); if not, to establish where and by whom it is exercised.

The concept of the place of central management and control is directed at the highest level of control of the company's business, rather than the place where the main business operations are to be found. This must always be a question of fact in any particular case, but the place of directors' meetings will usually be of significance if they are the medium through which central management and control is exercised. If, however, central management and control is in reality exercised by, for example, a single individual, the company's residence will be where that individual exercises his powers.

With regard to the particular problem of residence of a subsidiary, simply because the parent is resident in a different country will not in itself mean that the subsidiary is resident where the parent is resident unless the parent in effect usurps the functions of the Board of the subsidiary. Matters taken into account would include the extent to which the directors of the subsidiary take decisions on their own authority as to investment, production, marketing and procurement without reference to the parent.

On this basis, Brown Inc. seems at risk of being UK tax-resident for corporation tax purposes as its board meet in London to take the substantive decisions in the running of the business. All of its profits would therefore be subject to UK corporation tax.

UK-incorporated companies

However if a company is incorporated in the UK, then it is **always** regarded as UK-resident **regardless** of where central management and control is exercised.

Red Ltd is therefore UK-resident for corporation tax purposes despite the fact that it has a local Board of Directors in Canada who control its affairs.

Yellow Ltd is non-resident according to the incorporation and central management and control tests above. However a non-resident company **can** be liable to UK corporation tax if it is trading within the UK rather than trading with the UK from outside. From the limited information which we currently have, it is not clear whether the company is actually undertaking any activities in the UK which would constitute trading in the UK. Simply providing information to potential customers is unlikely to be sufficient to constitute trading in the UK and to create a corporation tax liability. If there is a corporation tax liability, it would be limited to the profits generated from activities in the UK rather than the whole of the profits of the company.

Double Taxation

Where a company can be regarded as resident in each of two countries under their respective domestic tax laws consideration should be given to the terms of any double tax agreement which may exist between those territories. Such an agreement may give primary taxing rights to one or other of the countries. In the absence of a double tax agreement the UK may give unilateral relief to ensure that the same profits are not taxed twice in the two countries.

VAT AND DUTY

Morocco import

Imported goods must qualify as "originating" in the relevant country to qualify for a particular EC preference. The rules usually require either that the product is wholly produced in the preference country or that it has been manufactured there in accordance with rules which govern the use of imported materials. Importantly, the origin rules vary for each preference so you will need to refer to the particular preference being claimed by Green Ltd. This should be available in the Official Journal of the European Union or alternatively Customs Notices.

In all cases, Green Ltd should hold appropriate documentary evidence from the time of the import – usually a Form A or Form EUR1 stamped by the local authorities of the country of export.

A Binding Origin Information (BOI) is a legally binding written origin decision from HMRC (or another Customs authority) which is valid throughout the EU. The fact that Green Ltd's competitor has one is very useful in arguing the point with HMRC but a BOI can only be invoked and relied upon by its holder. It is therefore uncertain without further investigation how likely it is that Green Ltd will have to pay duty on this import.

China transport costs

HMRC are correct that delivery costs must always be added to the price paid or payable for goods for the purposes of the "transaction value" method of valuation (Method 1). This would include:

- cost of transport
- cost of insurance
- loading and handling charges
- container charges
- terminal charges
- any other costs of carrying the goods from one place to another

However, only costs up to the "place of introduction" into the EC of the imported goods must be included – which would also cover all inland transport and associated charges in the country of export. For goods imported by road or rail, the place of introduction is the point where the goods first pass a customs office on EC territory – usually where the goods cross the EC border. However, for goods imported by air, as in this case, the place of introduction is the point where the EC border is first crossed during the air journey and the costs can be apportioned (Article 163 IP, Customs Notice 252) so HMRC's calculation appears incorrect.

Export conditions

In order for a supply of goods to a taxable person in another EU country to be zero-rated for VAT purposes all these conditions must be met:

- the recipient's VAT registration number must be shown on the sales invoice.
- the goods are physically despatched from the UK, and
- evidence of removal is obtained within 3 months from the time of supply (6 months where goods were involved in processing or incorporation prior to removal).

Evidence of removal could include customer orders, correspondence with customers, sales invoices, packing lists, commercial transport documents (e.g. airway bills, consignment notes) and bank statements.

By law the documents relied on must show details of:

- the name, address and VAT number of the customer in the EC the invoice number and date;
- the description, quantity and value of the goods;
- the name and address of the third person in the UK to whom the goods were delivered;
- the date by which the goods must be removed;
- proof of removal obtained from the person responsible for transporting the goods out of the UK; and
- the date the goods were actually removed from the UK.

If the conditions are not met then the supply is treated as if it should always have been standard-rated and then VAT and interest/penalties are due. However, in the Teleos Plc case the ECJ held that the tax authorities could not demand tax from a supplier who had acted in good faith and was not involved in tax evasion provided he took every reasonable measure in his power to ensure that the supply he was making actually happened in accordance with the rules. Following the decision HMRC issued Revenue and Customs Brief 61/07 which acknowledges the decision and the restriction on their right to recover. In deciding how likely HMRC are to prevail in this case, the evidence Green Ltd held and the steps it took to establish that the goods physically left the country and that no fraud was taking place should be examined.