

VAT Update July 2015

31 July 2015

FROM THE COURTS

A PARTNERSHIP V HMRC FTT: TC04358

This case is a useful reminder that the recovery of input VAT is driven by underlying contractual arrangements.

The partners were in dispute and took advice separately, from different firms of solicitors, regarding issues concerning an outgoing partner. The solicitors duly invoiced various partners and groups of partners with whom they had engaged separately.

Later, legal costs incurred by the partners were met by the partnership and at that point the partnership attempted to recover the VAT.

HMRC rejected the claim firstly on the grounds that the legal services were not supplied to the partnership, rather to the partners or groups of partners as individuals. They also put forward the questionable argument that the services did not have a direct and immediate link with the partnership's business activities.

The Tribunal found for HMRC, citing the Redrow decision and the need for the partnership to have been party to the contracts with the solicitors. The Tribunal indicated that had the remaining partners engaged jointly with the solicitors, recovery may have been permitted. The decision effectively rejected HMRC's contention that there is no direct and immediate link between services provided in relation to a partnership dispute and the business of that partnership.

MR RONALD ASQUITH V HMRC FTT: TC04319

This case highlights the dangers of failing to document commission arrangements properly, and to consider the VAT consequences. It involved the misinterpretation of a series of transactions as an agency arrangement.

Mr Asquith arranged the purchase of tickets on behalf of customers. He acted on their specific request (rather than selling on tickets bought by him in batches). However, because he was unable to establish that there was an agreement between the customer and the event provider, it was held that no agency relationship was in place.

Rather than his turnover being limited to his "commission", (which would have kept him below the VAT registration threshold), the Tribunal confirmed that Mr Asquith's turnover was in fact based on the total amount paid by his customers for the tickets. Consequently, he breached the VAT registration threshold thirteen years previously, and his registration was backdated.

This decision also serves as a reminder that HMRC have up to twenty years to raise an assessment for unpaid VAT where a person has failed to notify them of an obligation to register for VAT.

PREMIER FOODS (HOLDINGS) LTD V HMRC EWHC 1483

This case highlights the need to check that VAT rates charged by suppliers in order to prevent unnecessary dispute down the line.

A supplier incorrectly charged Premier Foods the standard rate of VAT on food items which should have been subject to the zero rate over a number of years. Premier Foods paid the invoices and recovered the input VAT. The supplier accounted for the output VAT to HMRC.

As a consequence of the supplier's attempt to recover the VAT it had previously declared as output tax to HMRC, upon noticing the error HMRC issued assessments to Premier Foods for the input tax it had recovered. The usual course of action would be for Premier Foods to accept HMRC's assessment and seek to recover the incorrectly charged VAT from the supplier. However, the supplier had in the meantime gone into administration. Premier Foods was therefore unlikely to be able to recover the VAT in full from the supplier.

Premier Foods therefore appealed against HMRC's assessment, asking HMRC to allow its recovery of input tax to stand and not to repay the same to the supplier. HMRC did not believe it had the power to pursue this course of action, and therefore sought a ruling from the High Court.

Fortunately for Premier Foods, the High Court found in their favour and directed HMRC to repay them directly. This confirms that, under EU law, a customer who bears the burden of incorrectly charged VAT has recourse to HMRC where reimbursement of the VAT would otherwise become impossible or excessively difficult.

UPDATES TO VAT NOTICES

VAT Notice 700/24: postage, delivery charges and direct marketing; and

VAT Notice 701/10: zero-rating of books and other forms of printed matter.

These have been updated to clarify the treatment of standard-rated direct marketing (e.g. door drops) which had in some cases previously been treated as zero-rated supplies of delivered goods.

Revenue and Customs Brief 10 (2014) explains the changes.

VAT Notice 735: VAT domestic reverse charge on specified goods and services.

This has been updated following the addition of wholesale gas and electricity to the list of supplies subject to the domestic reverse charge. The domestic reverse charge requires business customers to account for output VAT on sales to them by suppliers, a measure which is designed to combat carousel fraud. Other goods and services subject to the domestic reverse charge include mobile phones, computer chips and emissions allowances.

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