

VAT Update January 2016

31 January 2016

FROM THE COURTS

ADECCO UK LTD V HMRC FTT: TC 04743

This case was brought to appeal a decision by HMRC to reject an application for repayment of VAT charged on the supply of staff. The application had been made following the decision in another First Tier Tribunal (FTT) case brought by Reed employment in 2011 (TC 01069).

Adecco supplies temporary staff to clients. The agency sources staff and introduces them to clients, and also arranges payment of their salaries and tax. For this Adecco charges a commission in addition to recharging the client for the staff wages. In the period in question, Adecco charged VAT on the whole amount, i.e. staff salary and National Insurance Contributions as well as on the introductory fee. In the Reed Employment FTT case, which was brought on substantially the same facts, it was decided that VAT should not be charged by the agency on staff costs since Reed acted as an introductory agent only and did not actually supply staff to its clients. In light of this, Adecco sought to reclaim VAT on the recharge of salaries and NICs.

Somewhat surprisingly, the FTT ruled against Adecco's appeal and agreed with HMRC.

In coming to its conclusion the FTT considered the contractual position, the liability to pay and the economic reality of the arrangements.

With respect to the contractual position, the FTT found that Adecco had assumed responsibility to the staff for payment of their salaries, rather than simply acting as facilitator of payments.

In Reed, the FTT concluded that the agency did not supply staff because Reed had limited control over the staff's work and there was no mutuality of obligation between temporary staff and Reed. The FTT in Adecco disagreed with this approach, finding that the lack of control did not prevent there being a supply for a consideration.

The FTT, following precedents set in several recent cases, therefore found that the VAT treatment should follow the liability to pay unless this did not reflect economic reality. On considering the facts, the FTT found in this case that economic reality was consistent with the contracts in place and

consequently the VAT treatment should follow the payment arrangements.

Given the inconsistency with the Reed case, the decision may be appealed.

This case acts as a reminder that decisions in the FTT may set a precedent but that they are not binding on other tribunals. In any case, it is important to consider carefully the contractual terms and weigh up whether these reflect the economic reality of an arrangement; only if they do not should you consider deviating from the VAT treatment which stems from following contractual arrangements alone.

THE BERKSHIRE GOLF CLUB, THE GLEN GOLF CLUB, THE WILMSLOW GOLF CLUB V HMRC FTT: TC 04774

This case followed an appeal by the Bridport & West Dorset Golf Club to the CJEU which confirmed that UK law had been implemented to distort competition in such a way that was not intended by EU provisions. UK law had been drafted such that nonmembers of sporting bodies (such as golf clubs) were not entitled to the exemption from VAT afforded to members for certain activities.

As a result of the Bridport case a number of golf clubs have sought repayment of over-declared output VAT from HMRC. This is because golf clubs will have previously charged VAT on non-member green fees which should have been VAT exempt.

However, unjust enrichment provisions mean that HMRC is not permitted to repay VAT where it will not be restored to the person who ultimately suffered the cost.

The golf clubs which were heard in this joint case argued that they suffered significant economic loss because VAT pushed up the nonmember green fees and suppressed non-member attendance; they argued that the economic loss was at least 95% of the VAT overpaid.

HMRC argued that the economic loss was between 35% - 54% for the various clubs. Both HMRC and the clubs used expert economists to support their positions.

On balance, the Tribunal determined that the clubs' arguments were more reasonable and decided on a restriction of 10%, meaning 90% of the overpaid output VAT would be repaid to each club.

This case demonstrates the potential difficulties and expense of settling unjust enrichment cases, with potential outcomes including 0% and 100% of the overpaid output VAT and everything in between.

UNITED GRAND LODGE OF ENGLAND V HMRC UT BVC 534

By way of background, membership subscriptions paid to trade unions, and certain professional or public interest bodies are exempt from VAT, subject to certain conditions.

The United Grand Lodge of England (UGLE) is an association of Freemasons. Members of the organisation pay subscriptions on which VAT had historically been charged. In an earlier decision, the First Tier Tribunal (FTT) held that its aims were not predominantly of a 'philosophical, philanthropic or civic nature' and as such that the exemption from VAT did not apply to membership subscriptions. UGLE appealed to the Upper Tribunal.

The approach of the FTT was to consider UGLE's aims as a whole, and to ascertain whether overall the aims fell within the qualifying conditions for exemption. Although the FTT found that some of the organisation's aims did qualify, they were not sufficient to outweigh other aims such as fraternity, selfimprovement and mutual care.

Subsequently, UGLE sought to appeal the decision on the basis that the FTT had erred in the method it had applied, arguing that the FTT should have established the organisation's main aim and then discounted any incidental or ancillary aims. The Tribunal disagreed, finding that there was no obligation in law to identify the main aim, and that the approach of considering all aims and judging these together was appropriate.

This case neatly demonstrates the courts' current thinking on the application of this VAT exemption.

UPDATES TO VAT NOTICES

VAT Notice 700/60: payments on account – updated contact details.

VAT Notice 700/56: insolvency – clarification on post-deregistration input tax claims.

VAT Notice 701/14: food – updated in respect of Scottish snowballs and sport nutrition drinks following recent case.

VAT Notice 723A: refunds of VAT in the EC for EC and non-EC businesses – updated contact details.

VAT Notice 700/12: how to fill in and submit your VAT return – updated with regard to payment of VAT.

The following three VAT Notices have been updated to include details of detail with VAT administration online:

VAT Notice 700/1: should I be registered for VAT?

VAT Notice 700/1 I: cancelling your registration.

VAT Notice 700/44: barristers and advocates.

MISCELLANEOUS

HMRC BANK DETAILS

HMRC bank details for the receipt of VAT payments made from non-UK bank accounts are changing following a general move from Citibank to Barclays. Details can be found on the gov.uk website. From 31 March 2016, payments to the Citibank account will not be accepted.

Note that payments from UK bank accounts should continue to be made to the existing Citibank account, but that this is expected to change in due course.

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