Constable VAT Consultancy

VAT Focus 10 May 2013

WHA case finally concludes

A long running VAT case has finally concluded following a recent ruling by the UK Supreme Court. This case relates to a VAT scheme set up in 1998. It has taken until now to get a definitive ruling and in reaching a conclusion the Courts have gone full circle!

WHA Ltd had argued that as a result of a complex scheme (involving off-shore insurance businesses), VAT incurred on the supply of car repair services by UK garages (paid for by WHA) was reclaimable as input tax.

The scheme was established to minimize the impact of VAT on the provision of motor breakdown insurance to private individuals. By using non-EU reinsurers (to whom WHA provided claims handling services) a full recovery of VAT incurred on the overhead costs of WHA's business was possible. WHA also recovered the VAT charged by the garages when repairs are carried out to an insured person's vehicle. This reduced the payment the insurer was required to make by 15%.

HMRC challenged WHA's input tax recovery. The initial Tribunal rejected WHA's appeal on the basis that the car repair service was made to the insured customer and not to WHA. However, the case progressed to the High Court and the Court of Appeal.

In 2004 the High Court held that this scheme, if taken at face value, achieved its tax saving aim. However, HMRC appealed, arguing that the scheme should be struck down as it involved steps which amounted to an 'abusive practice'. The Court of Appeal, ruling in 2009, supported HMRC's view that the scheme **was** abusive as two requirements for the establishment of abuse, laid down in the *Halifax* ECJ decision, had been satisfied. Those requirements were that:

• recovery of input tax incurred in the provision of exempt insurance services was contrary to the purpose of the Sixth Directive.

• the sole purpose of the scheme was to minimise any net liability to VAT.

The Supreme Court has returned again to the original input tax point and has ruled that the input tax incurred was not WHA's to reclaim. The abuse point was not therefore considered as the scheme failed.

Assessment out of time

A solicitor provided services to associated companies. He did not charge or account for VAT on these supplies (on the basis that he believed them to be exempt financial services). HM Revenue & Customs believed that the supplies were not exempt and assessed. The liability of the supply was not the issue here but whether the assessments were raised in time (the three year rule applying at the time).

HMRC's contention was that the payments were effected by inter-company accounting which took place when the accounts were signed off - within the three year period. The taxpayer contended that the inter-company adjustments did not discharge the liabilities and thus did not create a payment for tax point purposes and the tax point was the earlier date of the invoices, which was outside the three year period. The Tribunal examined the issues carefully and decided that the inter-company accounting did not constitute payment. Therefore, the assessment issued (£499,083) was time barred.

Come and see us at the South East Business Show

The South East Business Show 2013 is being held at the Copthorne Hotel, near Gatwick, on Friday 17th May. CVC will be on Stand 36 where you can talk to some of our consultants and enter our free prize draw; there may even be some Jaffa cakes.

Attendance to the show is free and with over 100 businesses presenting it should be a fantastic event. It would be great to see you there.

http://www.b2bsoutheast.com/

Visit our website for current news updates. To discuss any of the above issues please contact us on 0207 830 9669 or email: info@ukvatadvice.com .You can also follow CVC on Twitter

Thinking outside the box