

VAT UPDATE ISSUE | 2017

31 March 2017

FROM THE COURTS

U-DRIVE LTD [2017] BVC 510

This case considers the right to input VAT recovery in relation to tripartite arrangements. It is important to understand in such situations who is the actual recipient of the supply since the right to input VAT deduction is conferred on the recipient and not the person contractually obliged to settle the liability.

U-Drive is a vehicle hire business. When its vehicles are involved in accidents with third parties it will sometimes, to save costs, agree to pay the third party vehicle owner's repair costs rather than meet its liabilities by indemnifying the hirer.

The case concerned contracts for repairs which were entered into between U-Drive and garages for works to third party vehicles. U-Drive claimed the VAT charged. HMRC rejected the claims and was supported by the decision of the First Tier Tribunal (FTT). The Upper Tier Tribunal has now upheld the FTT's decision.

The key to the decision in this case was that in essence U-Drive had simply agreed to settle the third party vehicle owners' costs. That payment constituted third party consideration rather than payment for receipt of a supply. U-Drive did not benefit from the repair services, other than to discharge its liability.

It is worth noting that the Tribunal made it clear that the facts of this case were crucial to the decision. Marginal differences in facts could have altered the outcome and so it is important to fully understand the circumstances before drawing conclusions in similar cases.

QUITIE LTD [2017] TC 05694

This case examines the impact of a change to planning consent to the rate of VAT which was chargeable.

Quitie Ltd acquired land on which it sought planning permission to construct a house. In due course it invoiced CR, the company's shareholder who was to acquire the house, for construction services plus standard-rate VAT. Quitie charged VAT on the basis that the conditions for zero-rating were not met due to a planning restriction meaning that the property could not be disposed of separately from a hotel on the same site.

Subsequently, but prior to completion of the construction, the restriction on disposal of the newly constructed property was lifted. Accordingly, Quitie Ltd raised a credit note to CR for the VAT previously charged and did not charge VAT on later invoices.

HMRC took the position that the restriction meant that supplies made whilst it was in place could not be zero-rated. Quitie Ltd appealed to the First Tier Tribunal (FTT), which overturned HMRC's decision.

The reasoning behind the Tribunal's decision is that the point at which the liability of the supply is determined is completion as it is at this point that the nature of the building is known. At the time of completion the planning restriction which would have precluded zero-rating had been lifted and so the conditions for the building to qualify as a dwelling were met. It is important to note that the planning restriction was lifted during the course of the construction and not after completion; in other cases (c.f. R & C Commrs v Shields [2014] BVC 541) where planning consent is changed after completion the VAT liability is not amended in retrospect.

DORAN BROS (LONDON) LTD [2017] TC 05554

Doran Bros (London) Ltd (Doran Bros) obtained tax advice from a third party and subsequently made investments via an Employee Benefit Trust (EBT). Doran Bros had one director who was also its sole employee.

VAT was incurred on the tax advice received which Doran Bros claimed on its VAT return. HMRC blocked the recovery on the grounds that there was not a sufficient link between the input and services provided by the company. It is well established in case law that there needs to be a direct and immediate link between inputs and outputs in order for VAT to be recoverable.

The First Tier Tribunal (FTT) considered two principal points in coming to its decision: whether the tax advice was supplied to the company rather than the director and whether there was sufficient link between the services received and the business's activities.

The engagement letter with the tax advisors was addressed to the company and the Tribunal did not have any reason to believe that this did not reflect the economic reality of the

situation. As such, on the first point the FTT the was satisfied that Doran Bros was the recipient of the services.

On the second point, the Tribunal was also satisfied on the grounds that the company had sought the advice in order to improve its own position by reducing its payroll liability: a legitimate business purpose. The benefit to the director was incidental.

This is a First Tier Tribunal decision so is not binding on other courts. It will be interesting to see whether HMRC appeal the decision.

UPDATES TO VAT NOTICES

VAT Notice 700/67: registration scheme for racehorse owners – changes to steps to register for scheme and contact details

VAT Notice 701/29: betting, gaming and lotteries – non-technical changes

VAT Notice 700/1 (supplement): should I be registered for VAT? - updates VAT registration thresholds

VAT Notice 700/11 (supplement): cancelling your registration – updates VAT registration thresholds

VAT Notice 700/56: insolvency – update to contact details for MVLs

VAT Notice 701/30: education and vocational training – details regarding treatment of funds from apprenticeships services account from 1 May 2017

VAT Notice 718: the Margin Scheme and global accounting – Notice title amended from 'the VAT Margin Scheme and global accounting'

VAT Notice 718/2: the auctioneers' scheme – Notice title amended from 'the VAT auctioneers' scheme'

VAT Notice 733: Flat Rate Scheme for small businesses – minor amendments

VAT Notice 742A: opting to tax land and buildings – updates regarding the 2% occupation rule

VAT Notice 1002: adapted motor vehicles for disabled people and charities – new Notice

NEW HMRC BRIEFS ISSUED

Revenue and Customs Brief 17 (2016): VAT - treatment of colouring and dot-to-dot books – adult colouring and dot-to-dot books do not fall under the zero-rating provisions and

so must be standard rated. Such books are considered adult if the books are:

- marked as suitable for adults or grown-ups; or
- held out for sale in retail shops together with other adult books that are unsuitable for children or are not appropriately marked as suitable for children when for sale on a website; or
- contain images reflecting profanity, pornography, violence and illegal acts.

MISCELLANEOUS

MAKING TAX DIGITAL

'Making tax digital' refers to the government's plans for businesses and landlords to report tax information to HMRC online and on a quarterly basis. These plans were due to come in from April 2018 but now will be effective from April 2019 for those trading above the VAT registration threshold, and from April 2020 for others. VAT-registered businesses therefore need to begin to prepare to change their systems ready to file through the HMRC Making Tax Digital Software. Further information is expected in the Autumn.

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