

Constable VAT Consultancy

VAT Focus 19 March 2013

Financial Advisory Services

The Court of Justice of the European Union (CJEU) has issued a ruling regarding a German business which may have a significant impact in the finance sector in the UK. The German taxpayer provided advice and recommendations for the buying and selling of shares to an investment management company (IMC) who managed a special investment fund. The IMC implemented the recommendations (on the basis that they did not break any statutory restrictions), although the final decision and responsibility lay with the IMC. The German taxpayer sought agreement from the German tax authorities that they were making exempt supplies of the "management of special investment schemes". The German tax authorities thought the supplies were not the management of the fund so were taxable.

The CJEU ruled that the relevant European Directive should be interpreted so that the advisory services provided to a special fund manager falls within the concept of "management of special investment funds". This interpretation appears to be at odds with UK legislation which sees advisory services only as excluded from the relevant exemption.

Reed – Unjust enrichment

In 2011 Reed employment were successful in recovering a repayment of VAT on the basis that they should have only accounted for VAT on their commission rather than the whole amount charged to the client in respect of staff for whom they had found employment. That case related to charges made to clients who could not recover all the VAT they incurred (non-registered businesses, partially exempt businesses, etc). In these cases Reed issued credit notes to the client for the VAT "overcharged" and adjusted their VAT returns to reflect this, generating the claim. They also made two further claims, but for charges made to clients who could recover the VAT incurred in full. HMRC rejected these claims as they would unjustly enrich Reed. The Tribunal agreed with HMRC that unjust enrichment was applicable and that the reclaims were not payable.

Points mean input tax

In the case of Aimia Coalition Loyalty Ltd (formerly LMUK) the operators of a loyalty card had sought to recover VAT charged to them by the supplier of the goods or services redeemed by the customer in exchange for loyalty points. The Supreme Court agreed with the taxpayer that "redeemer payments" were a necessary part of the taxpayer's business and as such VAT incurred on payments made to high street retailers and others was recoverable. What is notable here is that this judgement was the culmination of a set of events started in 2003 when Customs first sought to disallow the input tax claimed. In reaching this decision the Court has effectively treated a CJEU judgement on this matter as non-binding as it concluded that the judgement was based on an incomplete evaluation. The VAT effects of business promotion schemes are notoriously complicated and this is an area in which professional advice is often warranted.

Parking fines

We reported on the case of Vehicle Control Services (VCS) in our VAT Focus on 18 May 2012. VCS signed agreements with car park owners to provide "parking control services". These services include taking parking enforcement procedures including the issuing of penalties and clamping and towing away vehicles. At both the First Tier and Upper Tier Tribunals the penalties issued by the taxpayer were seen as being subject to VAT but for different reasons. The First Tier Tribunal found that the payments were for supplies made to the motorist whereas the Upper Tier found that they were payments for supplies made to the car park owners. An appeal was made to the Court of Appeal. The Court of Appeal saw that the taxpayer was enabled to eject trespassers and that these fines were damages for trespass and therefore both Tribunals had erred and the payments were not subject to VAT.

Budget 2013

The Chancellor will deliver the Budget statement on Wednesday 20th March around 12.30pm. CVC will aim to issue a special Budget Focus later that day unless planned industrial action by the civil service unions delay access to budget material.

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Thinking outside the box