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3rd party consideration and the construction of a doctors surgery

Lease of surgery and "cost rents" - 3rd party consideration

Care must be taken to identify all income sources. In particular, consideration from 3rd parties, is often overlooked. A recent Tribunal case involved a medical practice that constructed a building in order to lease it to themselves and other practitioners. The practice waived VAT exemption in order to recover input tax on construction costs and accounted for VAT on the rental income paid by the Lessees. Customs contended that the true consideration should have included an allowance paid by the NHS to Medical Practitioners known as "cost rent" in addition to the rental income payable by the Lessees.

The practice argued that Customs had misinterpreted the nature and purpose of the cost rent, contending that it did not represent any part of the consideration for the supply of the premises, but was merely an element of the remuneration received by its partners as medical practitioners. It argued that there was no scope for bringing the cost rent into account for the purposes of determining the vat liability of rent under the lease.

The Tribunal ruled in favour of Customs declaring that legislation says that consideration is:

*"..... everything which constitutes the consideration which has been or is to be obtained by the supplier from **the purchaser, the customer or a third party** for such supplies including subsidies directly linked to the price of such supplies....."*

Whilst the facts of this particular case are specifically related to medical practitioners and cost rent payments, we must emphasise that care needs to be taken with structures and contracts, as over £60,000 of vat was lost which ought to have been avoidable.