

ECJ finds against sale and lease back arrangement for a university

The taxpayer was part of a group that was wholly owned by a university. The university had a very limited ability to deduct input tax. A building was constructed, bought from the university and leased back to them on a 20 year lease. Subsequently the company disposed of its entire interest in the building by two successive transactions. The first of which was the grant of a 999-year lease, (subject to the 20-year lease in favour of the university), to a fellow wholly owned subsidiary for a premium of £6m and the second, three days later, was the transfer of the freehold reversion to the university for a nominal amount.

The transfer of the freehold reversion was a taxable transaction, thereby enabling associated input VAT recovery on the construction, because the building was completed less than three years before. (See VAT Property Solutions).

Customs challenged the VAT recovery and claimed that the supply to be taken into account was the 999-year lease and that the transfer of the freehold reversion should be ignored as *de minimis*. In the alternative, they claimed that there should be an apportionment between the grant of the 999-year lease and the transfer of the freehold reversion, in proportion to the respective value of each of those transactions. Either way, a huge amount of input tax on the construction of the building was in their view repayable.

Customs view was challenged before the VAT Tribunal. The trader argued that it had disposed of its whole interest in the building by the transfer of the freehold reversion alone. The tribunal heard the case which was transferred to High Court which referred it to the ECJ for a preliminary ruling.

The ECJ held that where a 999 year lease over capital goods was granted to a person against the payment of a substantial premium (exempt) and the freehold reversion in that property was transferred three days later to another person at a much lower price (taxable), and the two transactions were inextricably linked, **the goods in question were regarded, as having been used in business activities which were presumed to be partly taxable and partly exempt in proportion to the respective values of the two transactions.** Input tax was therefore repayable to Customs.

This is really another take on the former lease and lease back arrangements which were marketed by accountancy firms in the 1990s and which Customs clamped down on. This result is therefore perhaps not surprising.