

Claims for overpaid VAT are transferable Midlands Co-operative Society Ltd [2007] EWHC 1432 (Ch.)

Summary

The High Court has decided that claims for overpaid output tax may be made by an assignee of the claim - creating significant opportunities to submit retrospective claims, particularly in the business transfer context. Furthermore, the approach taken by the High Court suggests that other types of VAT claims (such as input tax and bad debt relief claims) may also be assignable.

Background

The case arose in the context of a business transfer between two Industrial & Provident Societies (IPS's). HMRC rejected a claim for overpaid output tax made by the Appellant (the transferee of the business) under s 80 VAT Act 1994 on the ground that it had no standing to make the claim - as only the transferor (which had since been dissolved) was entitled to claim.

Details of the Opinion or Judgment

The High Court has reversed the decision of the Tribunal and found in favour of the Appellant, and remitted the case back to the Tribunal to establish the amount of overpaid output tax and to determine whether HMRC have any valid defence to the claim.

The argument before both the Tribunal and the High Court focussed on the particular context of the assignment - i.e. the business transfer (TOGC) provisions and a special provision in the Industrial & Provident Societies Act 1965 which allows one IPS to transfer its undertaking to another by special resolution. However, in reaching its judgment, the High Court took a much more general approach.

The High Court considered the key question to be whether, on its proper construction, the VAT legislation allows the benefit of a s 80 VAT Act 1994 claim to be assigned. It held that the only circumstances in which an assignment would not be allowed would be where:

- the VAT legislation prevents (either expressly or by necessary implication) such an assignment; or
- there are reasons of general policy for preventing the assignment.

As HMRC had not identified any express prohibition, the High Court focussed on whether it was necessary to imply a prohibition. It examined the TOGC provisions and held that they are enabling in nature and had nothing to do with the transfer of an accrued claim. It then looked at regs 9 and 30 of the VAT (General) Regulations 1995 (SI 1995/2518), respectively 'death, bankruptcy or incapacity of taxable person', and 'persons acting in a representative capacity' and similarly found them to be irrelevant to the question at hand.

The High Court did not agree with the Tribunal that the wording of s 80(1) VAT Act 1994 - "Where a person has...paid an amount to the Commissioners...they shall be liable to repay the amount to him." prevented the assignment of the claim by necessary implication. The High Court appears to have been persuaded by the Appellant's argument that the questions of :

- which person the VAT legislation confers the claim upon; and
- whether that claim is assignable to another person,

are two separate questions, and that s 80(1) merely dealt with the first question and says nothing about whether a claim is assignable. The High Court therefore concluded that there is neither an express or implied statutory bar to the transfer of a s 80 claim and, as no credible policy reason for preventing assignments was raised in argument, allowed the appeal.

Implications

This decision creates an immediate opportunity for businesses across all industry sectors to lodge retrospective claims, in particular for those which have:

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- purchased (or otherwise received a transfer of) a business; and
- either not claimed, or had a claim rejected, for overpaid output tax because it was originally accounted for by the seller/transferor.

The decision may also open up other significant opportunities for retrospective claims. An initial analysis shows that, given the breadth of the approach taken by the High Court, the same principle may apply to input tax and bad debt relief claims, and possibly also claims under reg 35 VAT (General) Regulations 1995 (SI 1995/2518) - correction of errors, and reg 38 - adjustments in consideration.

If you think that you may be affected by this decision then please contact 4 Eyes Ltd.