

Supplies to parent were not 'consultancy services' for VAT place of supply purposes***Sumitomo Mitsui Banking Corporation Europe Ltd [2009] UKFTT 121 (TC)***

In a case concerning the place of supply of services provided by a UK bank to its Japanese parent, the VAT Tribunal has held that the services were not in the nature of 'consultancy'. The place of supply was therefore the UK, rather than Japan, and UK VAT was due. This decision will be of interest to all businesses supplying or receiving 'management' services cross-border.

Background

The case concerned the place of supply of services provided by the Appellant (the UK subsidiary of a multinational commercial bank) to its Japanese parent company. The services were provided under a 'service level agreement' (SLA), which described them as "management and corporate services". The services consisted of the services of the Appellant's chief executive officer (CEO), the general manager (GM), and the "Planning Group" (PG) - around 15 to 20 per cent of the costs of which were charged by the Appellant to its parent, intended to reflect the time spent on responsibilities vis-a-vis the EMEA division of the parent's business (in respect of which the Appellant played a leadership role).

The Appellant contended that these were 'consultancy' services for the purposes of sch 5 VAT Act 1994 and art 56 Principal VAT Directive 2006/112/EC, with the consequence that they were supplied in Japan and therefore outside the scope of UK VAT. HMRC, on the other hand, submitted that the services were of an essentially 'managerial' nature concerned with the day-to-day and longer term management of the organisation and, as a consequence, they were supplied in the UK and subject to UK VAT.

Held

The First Tier Tribunal held that the services were not in the nature of 'consultancy'. The place of supply was therefore the UK, rather than Japan, and UK VAT was due.

The Tribunal found that the essential characteristics of the services of the CEO, GM and PG under the SLA were that they were ongoing, involving decisions and integral to the group's management processes of control and strategy development. Consultancy services, on the other hand, were essentially advisory in nature. The Tribunal distinguished the VAT Tribunal decision in Vision Express (16848) on the basis that the services in question in that case were supplied by a limited team within the parent company and supplied for a short duration only.

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Comment

The VAT Tribunal has also recently held, in American Express (20744) that services supplied by a UK subsidiary to its non-EC parent were subject to UK VAT. These decisions will be of interest to all businesses supplying or receiving 'management' services cross-border.

It is understood that HMRC is also taking an interest in whether 'management' services supplied within fully taxable groups are being treated correctly for VAT purposes. Potentially affected businesses should review the VAT treatment of their 'management' services and should take professional advice where appropriate.

Note - The place of supply of all cross-border 'management' services between taxable persons will, from 1 January 2010, be the place where the recipient is established.

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