

Input tax recovery – Direct & immediate link

[Airtours Holiday Transport Limited NCN \[2010\]UKUT 404 \(TCC\)](#)

Summary

Airtours paid its accountants to review its business and produce a report which was used by third party financial institutions to make decisions on the future funding of its business. The Upper Tribunal held that although the Taxpayer received indirect and subsequent benefits as a result of the report, it did not receive a supply directly from its accountants and therefore, it was not entitled to recover the associated input VAT. This case could be highly significant for many tripartite transactions.

Background

The First Tier Tribunal (FTT) held that services and the preparation of a report carried out by the accountants under the terms of an agreement with the Taxpayer and a number of banks (the engaging institutions) aimed at obtaining an extension of a revolving credit facility were needed by the Taxpayer for the purposes of its business. As the Taxpayer had requested, authorised and secured the services for its own purposes and had made a binding promise to pay for the work, the Taxpayer was entitled to recover the associated input VAT.

HMRC appealed the FTT's decision to the Upper Tribunal (UT), arguing that:

- the agreement read as a whole provided for PwC to supply services to the engaging institutions and not to the Taxpayer;
- “You” in the agreement did not include the Taxpayer and, even if it did, it would not affect the conclusion that PwC’s services were not supplied to the Taxpayer; and
- in *Redrow Group plc* [1999] STC 161 there had been two supplies, i.e. a right supplied to Redrow to have estate agents' services supplied to house purchasers, and the estate agents' service supplied to the prospective purchaser but in this case there had not been a supply of the same service to both the Taxpayer and the engaging institutions, as the FTT had wrongly, in HMRC's view, decided.

The Taxpayer argued that:

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- “You” in the Agreement included the Taxpayer, which approved the scope of the work and authorised it;
- the receipt of a copy of the accountant’s report was beneficial to the Taxpayer;
- the benefits to the Taxpayer of having the report were that it required it to place before the engaging institutions, and it received a third party review of its strategic plans;
- the FTT decided that the Taxpayer was the recipient of the accountancy services and it did not matter that the engaging institutions were also recipients of it; and
- the Taxpayer, in any event, obtained the continuation of the revolving credit facility until 31 December 2003.

Held

The UT confirmed that the principal authority in this case was the House of Lords' judgment in Redrow. However, it considered that the FTT had wrongly interpreted that judgment as Redrow required that there were two supplies, the supply to Redrow of the right to have a supplier provide services to a third party (that right being of benefit to Redrow's business) and the supply of those services by the supplier to the third party. The FTT had interpreted Redrow as meaning that the same service could be supplied to two different recipients, and that was incorrect.

The fundamental question, according to the UT, was whether the Taxpayer had, like Redrow, received a similar right, or anything at all, from the accountants that was used or to be used for the purposes of its business in return for the payment which it had made for the report.

It was clear that the Taxpayer had received some benefit from entering into the agreement. However, it was necessary to have a direct link between the payment made and something received from the accountants themselves in order for the Taxpayer to be entitled to recover the VAT paid. An indirect benefit (e.g. the continued financing) flowing from the engaging institutions to the Taxpayer as a result of the services and report was insufficient, particularly as, when the Taxpayer engaged with the accountants, there was no guarantee that that benefit would ever accrue.

Turning to the engagement agreement, the UT noted that it was addressed to the engaging institutions, and its wording led the UT to the conclusion that the accountants were engaged to do something that the engaging institutions wanted for the purposes of their own businesses in order to decide whether to continue their financial support for the Taxpayer. Although the

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Taxpayer was a party to the agreement, it was not the recipient of the services for the purposes of its business, it was merely contracting to pay the fee.

Although the Taxpayer could point to a number of benefits which had accrued to it as a result of the services and report, enabling it to continue its business, the UT considered that it could not have contracted to receive those benefits: had the report been unfavourable, those benefits, like the continued funding, would not have materialised at all.

The UT also distinguished this case from Redrow on the basis that the Taxpayer had not made any business use of the right to have the accountancy services supplied to the engaging institutions. The engaging institutions had needed these services, they had created the need for the services, and they engaged for them in their own right, and the Taxpayer had received no more than a courtesy copy of the report and had to pay the fees. The FTT had therefore erred in law by finding that the services were supplied to the Taxpayer.

The UT also considered that the FTT had also erred in law in interpreting the agreement as the Taxpayer's authorisation for the accountant's work. The engaging institutions had first approached the accountants, contracted for the work and authorised it. The terms of the agreement pointed to the engaging institutions as recipients of the report for the purpose of their own businesses, even though the Taxpayer had influenced the appointment of the particular accountants and agreed the scope of the work for which it was paying.

HMRC's appeal was therefore upheld.

Comment

This decision may be significant as it appears to narrow the application of the Redrow principle that deduction of VAT is available to the taxpayer who pays for a supply to be made and receives 'anything at all' in return, which is used for the purposes of its business. In this case, the UT has restricted 'anything at all' to something which the taxpayer receives directly from the service provider and which is, from the outset, bound to benefit the taxpayer's business. A supply which benefits the taxpayer's business indirectly does not, in the Upper Tribunal's view, attract a right to deduction.

It is of course possible that the decision will be appealed. However, tripartite arrangements of this type are commonplace in the field of corporate financing and the amounts of VAT involved can be significant. Please contact 4 Eyes Ltd if you would like to discuss the implications of this decision for your business.

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