

Reimbursement of overpaid output tax following application of Halifax reconstruction

[Moorbury Ltd](#)

This case concerns the restating of transactions in an abusive situation under which HMRC pursued the two businesses involved for input tax. The Upper Tier Tribunal has supported the First Tier Tribunal's decision that HMRC must reimburse the output tax incorrectly paid to HMRC even though a separate claim for that VAT had not been made.

Background

Moorbury and Sunnyglen were subsidiary companies of the Cumbria Institute of Art (now part of the University of Cumbria). The companies were established to instigate a 'Halifax type arrangement', seeking to recover significant amounts of VAT on the construction of a new campus in 1999.

Under the arrangement, Moorbury accounted for £588,000 of output tax for supply of 'construction' services to Sunnyglen. Sunnyglen sought to recover the VAT charged by Moorbury as input tax, and Moorbury sought to recover as input tax supplies received from third party contractors. HMRC assessed both Sunnyglen and Moorbury for the input tax claimed. They invited Moorbury to submit a voluntary disclosure for the allegedly overpaid output tax as this was greater than the input tax Moorbury had claimed and so an off set credit for it could not be given by HMRC in the assessment issued to Moorbury - Moorbury never submitted a voluntary disclosure.

Following the ECJ Judgment in Halifax, the University of Cumbria accepted that the structure was abusive and the Halifax principles applied. HMRC sought to recover the input tax it had assessed, but refused to net off the output tax accounted for by Moorbury, on the grounds that no voluntary disclosure for this output tax had been submitted and the appellant was now out of time to recover the VAT.

Moorbury appealed, claiming that under the principles laid down in Halifax, HMRC must restate all the transactions and thus the output tax declared by Moorbury must be netted off against the input tax assessed by HMRC.

Held

The Upper Tier Tribunal asked whether the redefinition requires a claim under s80 VATA 94 or whether HMRC is required to reimburse the overpaid VAT in order to restore neutrality.

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The court agreed that HMRC's treatment undermined the principle of neutrality (which is a fundamental principle of the common system of VAT).

Whilst noting that Member States are given the power to specify the measures for the collection of VAT, these should not systematically undermine neutrality.

Whilst s80 provided a general remedy for the overpayment of VAT, a "Halifax reconstruction" falls outside this.

The purpose of redefinition is to collect the amount of VAT that would have been paid or collected in the absence of the abusive arrangement.

This did not mean that there was no limitation period under s80 and a distinction was made between general VAT cases and those where the Halifax principle is applied.

In terms of how HMRC should rectify the redefinition, the Judge was of the view that one sided input tax assessments should not be raised. The correct route is for HMRC only to demand the outstanding VAT which is correctly due after redefinition.

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