

Taxable or exempt supplies – VAT planning

Upper Tribunal rejects VAT appeal concerning use of a teaching block

[Grimsby College Enterprises Ltd \[2010\] UKUT TCC](#)

Summary

The Upper Tribunal has upheld the decision of the First Tier Tribunal in this case. The Appellant attempted to recover input VAT incurred on the construction and equipping of a new teaching block, on the basis that it would be making taxable supplies of the building's equipment to its parent (a further education institute). The Upper Tribunal held that the true nature of the supply by the Appellant to its parent was a VAT-exempt licence to occupy the teaching block.

Background

The Appellant sought to argue that it was entitled to recover input VAT incurred on the development of a new teaching block and associated equipment by attributing the input VAT to a taxable licence to use the facilities granted to its parent institute and taxable education courses supplies to third parties. When the development had commenced, the institute had engaged the contractors and, when the concept of the licence was introduced, the parties purported to novate the contracts for the development in favour of the Appellant.

The First Tier Tribunal held that there was no evidence that the contracts had been novated and the agreement of the contractor to invoice in the name of the Appellant was not evidence that a novation had taken place and the VAT on the construction was proper to the institute and used by the institute in making an exempt lease to the Appellant of the land on which the building stood. It was wholly irrecoverable. As regards the VAT on the equipment, the First Tier Tribunal agreed that it was the Appellant's input VAT. However, the Tribunal agreed with HMRC that the Appellant did not, in fact, occupy the building or conduct training courses. It had no employees and was reliant on the institute for all course components other than the equipment and it was therefore buying in courses from the institute and supplying them on to third parties. Consequently, the Appellant had granted exclusive occupation of the teaching block to the College and that was an exempt supply. The input VAT was therefore wholly irrecoverable.

The Appellant sought to persuade the Upper Tribunal that the First Tier Tribunal had been wrong to characterise the licence as a right to occupation of the building, and also that the right to enter into the building was ancillary or subsidiary to the right to use the equipment.

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Held

The Upper Tribunal held that, whilst the licence had clearly been drafted in such a way as to avoid conferring upon the institute any exclusive right of occupation such that it could be characterised as a supply of immovable property for VAT purposes (and thus exempt), the First Tier Tribunal's finding of facts demonstrated that the terms of the licence did not reflect the true nature of the relationship between the Appellant and its parent. The Upper Tribunal considered that it could be regarded as a 'sham': the intention had been throughout that the institute and its staff would be in complete control of the building.

As regards the assertion that the occupation was ancillary or subsidiary to the right to use the equipment, the Upper Tribunal did not consider that the Appellant had indicated that the First Tier Tribunal's analysis was wrong in law. The fact that it was possible to take a contrary view was not sufficient to show that the contrary view was the correct one, and the Upper Tribunal therefore dismissed the appeal on both counts.

Comment

This judgment emphasises the importance of careful implementation of arrangements which seek to achieve favourable VAT treatment, such that the facts support that treatment.

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