

VAT update – December 2024 (Lecture B1470 – 24.53 minutes)

Speedy payment discount

Summary – VAT was payable on the full amount received from customers who did not accept the taxpayer's 24-hour Speedy Payment Discount offer.

TalkTalk Telecom Limited supplied fixed and mobile telephone, paid TV and broadband internet access services to retail and commercial customers.

Between 1 January and 30 April 2014, the company offered most of its retail customers a 15% Speedy Payment Discount on certain services, provided they settled their bills within 24 hours of receiving them.

Only around 3% of customers actually paid within the 24 hours, the remaining 97% paid the full amount billed, mainly by direct debit.

The telecoms company believed that under the prompt payment discounts legislation in place at the time (Para. 4(1) Sch. 6 VATA 1994), VAT should be accounted for on the basis that the VAT consideration was the figure net of the discount, irrespective of whether or not discounted payment was received within the 24 hours specified.

HMRC disagreed and raised an assessment for £10.6 million believing that the Speedy Payment Discount offer only reduced the VAT consideration where customers had actually paid the reduced amount.

The First Tier Tribunal found that none of the supplies made by TalkTalk Limited came within paragraph 4(1) because:

“(1) In relation to services billed in advance, there were no terms ‘allowing a discount for prompt payment’. This was because the contract was only varied if the customer accepted the SPD offer for that particular month by making the payment within 24 hours. The variation of the terms happened simultaneously with the payment, and there was no term allowing for a discounted payment to be made on a future date.

(2) In relation to services billed in arrears, the SPD (Speedy Payment Discount) was an offer by TalkTalk to accept a lower sum with an earlier payment date to discharge a pre-existing contractual obligation and was thus a post-supply rebate of the consideration already due. Again, Para 4(1) did not apply.”

TalkTalk Limited appealed to the Upper Tribunal.

Decision

The Upper Tribunal found that none of TalkTalk Limited's original Terms and Conditions had changed:

- For customers who did not take up the offer, the Terms and Conditions did not change and their services were not supplied on terms allowing a discount for prompt payment;
- For customers who took up the discount, their Terms and Conditions only changed when the discount offer was accepted by customers and they paid within 24 hours.

As the Tribunal stated:

“I do not consider that the SPD offer was a unilateral change to the Ts & Cs because it did not purport to make any changes to them and no revised Ts & Cs were sent to the customers or published on the website which incorporated the SPD offer.”

The company was therefore required to account for VAT on the full amount received from customers who did not accept the SPD offer.

Note:

Paragraph 4 was amended with effect from 1 May 2014 stating that the consideration for a supply on terms which allowed a discount for prompt payment was only treated as the discounted amount where, among other conditions, payment was made in accordance with the terms that allowed the discount. Clearly in TalkTalk Limited’s case, only customers who actually settled within 24 hours received those terms.

TalkTalk Telecom Limited v HMRC [2024] UKUT 00284 (TCC)

Second-hand margin fraud

Summary – With the help of a number of foreign tax authorities, HMRC recovered £8.5 million in VAT and penalties from a watch retailer who had been using the second-hand margin scheme to avoid tax on the sale of imported, new watches.

Ancient & Modern Jewellers Limited operated as a watch dealer from retail premises open by appointment only and through a website iconicwatches.co.uk.

The business had storage facilities separate to the retail premises and it was these storage facilities that were the company’s registered place of business. Zachary Coles was a director.

In 2014 HMRC were contacted by the Italian tax authorities, requesting information about the company’s transactions with an Italian supplier.

A further request followed in 2017, when the Italian authorities requested that HMRC trace the supply of watches from an Italian company which had issued invoices in the names of at least six different companies.

HMRC then monitored Ancient & Modern Jewellers Limited monthly, who then identified record keeping supplier identification problems.

Ten other overseas tax authorities approached HMRC for information and, following a lengthy investigation, HMRC concluded that the company and Zachary Coles had been deliberately claiming that new watches, imported from abroad, were second-hand and had had been accounting for VAT under the second-hand margin scheme rather than on the full price paid for the watches.

HMRC issued best judgment assessments on the company for £5 million and a personal liability notice to Zachary Coles for £2.8 million (56% of the tax considered lost through the company’s deliberate, but not concealed, conduct).

The company and director appealed arguing that the assessments were not carried out under HMRC’s ‘best judgement’ principles and were ‘overstated’.

Decision

The First Tier Tribunal stated that Zachary Coles was not a reliable witness but it did accept that Zachary Coles was familiar with the terms and operation of the margin scheme as under cross-examination he had confirmed that:

- he had worked in the business with his parents for many years;
- the business traded in second hand goods;
- familiarity with the scheme was essential.

From the evidence presented, the First Tier Tribunal concluded that the company was not entitled to use the second margin scheme for a number of reasons and that Zachary Coles knew this, but deliberately chose to do so.

Most significantly the First Tier Tribunal established that although some watches were second hand, the majority were new. Zachary Coles mis-recorded purchases in the stock book, showing new purchases as 'unworn' and then accounting for all unworn stock as preowned. Further, watches were purchased as intracommunity supplies or imports, which are not eligible for the margin scheme.

Despite claims by the appellant, the First Tier Tribunal did not find HMRC's behaviour to be "vindictive, dishonest or capricious". The HMRC officer was diligent and thorough and the Tribunal stated:

"HMRC had legitimate concerns regarding A&M's use of the margin scheme generally and specifically and there was a wider concern that A&M were participants in fraudulent supply chains. We consider that the investigation was proportionately carried out considering these concerns and the Assessments raised in exercise of best judgment."

By recording all purchases from certain suppliers in the stock book, the company deprived themselves of the entitlement to use the margin scheme in connection with any purchases of used watches made from those suppliers.

With discrepancies between the annual accounts and no other evidence supplied by the appellant, the Tribunal concluded that it was entirely reasonable for HMRC to extrapolate their findings to all periods between 1 September 2014 to 31 August 2018.

The Tribunal concluded that HMRC's best judgment assessment was accurate and not overstated and that Zachary Coles had acted deliberately.

The appeal was dismissed.

Ancient & Modern Jewellers Limited and Zachary Coles v HMRC (TC09270)

High street jeweller

Summary – Input VAT deduction was denied as the taxpayer "knew or should have known" that the supplies were connected with the fraudulent evasion of VAT.

Microring Limited was a long-established high street jeweller business, operating from a shop in North West London. The company sold retail jewellery including Asian jewellery such as bangles, rings, and earrings. The company accepted gold in part-exchange but did not purchase it outright.

Following a visit, in 2006 HMRC wrote to the company confirming their discussions that the jewellery trade was an area that had been affected by “MTIC” fraud. The letter enclosed a copy of HMRC’s Notice 726 *Joint and several liability for unpaid VAT*.

In 2013, HMRC revisited the company and noted that they had been told that the company had decided to expand into the scrap metal business. They had no experience in this market but were intending to buy and sell on a back-to-back basis copper cathode, bright wires, etc. HMRC advised the company that this trade sector was “tainted with fraud” and that the company should safeguard its interests as it would be exposed to “risks”. HMRC gave the company a leaflet called *How to spot missing trader VAT fraud*. Although Notice 726 refers to specified goods, the company was advised that “it can apply to any commodity”. HMRC also referred the company to section 6 of Notice 726, “which describes the checks they can apply”.

This case related to ten back-to-back purchases and onward sales of silver between October 2015 and January 2016. The company made a 1% margin and did not pay its supplier until it had been paid by the customers. No meaningful checks were made on the parties involved.

According to VAT records, the company’s VAT “outputs” were just over £1 million in the 12/15 VAT quarterly period, just over £0.5 million in the 03/16 VAT quarterly period, and just £37,000 in the next period, 06/16.

HMRC raised assessments denying input tax of £310,184 claimed by the company in the 12/15 and 03/16 VAT quarterly accounting periods. HMRC submitted that the input tax claims were connected with fraudulent evasion of VAT and the company either knew, or should have known, this.

Decision

The company had taken little notice of the warnings that HMRC had previously provided. And stated:

“The purchases and sales were “small-margin, money for nothing” transactions, buying from companies of which Micro knew nothing of substance, in a business area divorced from Micro’s principal business”

The Tribunal continued:

“...the transactions therefore bore a number of the tell-tale signs of connections with VAT fraud, of which Micro had been recently informed in its dealings with HMRC.”

In the First Tier Tribunals view, there was no reasonable explanation for these circumstances other than that the purchases were connected with VAT fraud. The company should have known this and the appeal was dismissed.

Microring Limited v HMRC (TC09303)

DIY Housebuilder claims

Summary – The taxpayer’s claim under the DIY Housebuilder’s scheme in respect of his conversion of a barn into a dwelling was allowed, but he was denied a second, later claim in respect of the two-bedroom extension that was undertaken.

Planning permission was granted for two developments. The first was for the “conversion of a barn into a dwelling”. Although planning permission included a small bedroom extension, this extension was not undertaken. A completion certificate was issued without the bedroom and the taxpayer successfully claimed under the DIY Housebuilder scheme.

The second was for an "extension to existing barn conversion". Brian Lawton sought to extend the barn with a single-storey extension to now include two bedrooms rather than the initial one. He claimed that he submitted evidence to HMRC and they accepted that the property was uninhabitable and had not been lived in during the phase between the two parts of the development. He made a second claim under the VAT Scheme which was refused as HMRC stated that only one claim could be considered in relation to the first application and that the claim in relation to the second application was ineligible as it was an extension to an existing dwelling which did not qualify for a VAT refund.

Decision

Brian Lawton had decided to seek a completion certificate on the first application before all the stages specified in that application had been completed. By doing so, he confirmed that the first application development had been completed.

As the law only allows one claim, the First Tier Tribunal considered that this first DIY claim was the only claim that could be made for "the conversion of a barn to a dwelling".

HMRC were entitled to insist that only one claim was allowed as there had been no repayment in error. No invoices or work carried out before the 1st claim were submitted late or omitted from the first claim

HMRC's decision to refuse the second claim relating to the extension was correct.

The appeal was dismissed

Brian Lawton v HMRC TC09309

Reasonable excuse for late VAT returns

Summary – The taxpayer had a reasonable excuse for submitting her VAT returns late as she had taken reasonable care to avoid her bookkeepers' failings and had been given incorrect advice by HMRC.

Sandra Krywald, a solicitor, had been subject to the default surcharge regime since January 2021. This case concerned the new points-based penalty system applying to late returns and payments from 1 January 2023. It related to VAT periods 5/23, 8/23 and 11/23.

She had outsourced her bookkeeping services to a bookkeeping firm, who provided the figures needed to enable her to complete and submit her VAT returns.

During COVID, with her allocated bookkeeper vulnerable and working remotely from home, the relevant figures were produced late. Further, Sandra Krywald believed that the figures supplied may well have been wrong and so was reluctant to sign a VAT return declaring that the figures were correct. However, she did make monthly payments on account of the VAT.

HMRC advised that in order to submit a VAT return she needed to have "opening balances, but when a replacement bookkeeper was unable to resolve the position, she engaged the services of a VAT

specialist, who confirmed that HMRC's advice was incorrect that VAT returns could be submitted based on the turnover for each period.

HMRC centrally assessed Sandra Krywald to VAT under the new late payment penalty regime, with penalties based on HMRC's estimate of the VAT due for the relevant periods.

Sandra Krywald appealed against the late submission points and the late payment penalties, arguing that she had a reasonable excuse as she had relied on the bookkeeping firm to supply her with competent staff but once she realised that their figures were inaccurate, she made every effort to resolve the situation.

HMRC argued that under the legislation reliance on another person is not a reasonable excuse, and therefore the penalties were correctly charged.

Decision

Under the law, a taxpayer is not liable to either penalty points or a financial penalty for late submission, or for a late payment penalty, if they can establish that they had a reasonable excuse for their failure and put that failure right without unreasonable delay after the excuse has ended. However, it is statutorily provided that reliance on another person can only be a reasonable excuse if the taxpayer took reasonable care to avoid the failure and then remedied the failings without unreasonable delay once the excuse ceased.

The First Tier Tribunal found in the taxpayer's favour. Sandra Krywald had challenged the validity of the first bookkeeper's figures and was entitled to believe that the second bookkeeper would resolve the position. Seeking advice from the VAT specialist, she had taken reasonable care to sort out the issue and indeed highlighted HMRC's failings. This meant that she had a reasonable excuse up until this time. The First Tier Tribunal found that, by submitting her VAT returns in June and July 2024, she had remedied the failure to submit her returns without unreasonable delay.

The First Tier Tribunal went on to consider whether, had there not been a reasonable excuse, were there 'special circumstances' which would have resulted in the penalties being reduced to zero. The First Tier Tribunal concluded that the combination of the bookkeepers' failings together with HMRC's incorrect advice had led to far more work than would normally have been required and had resulted on the late submissions. The First Tier Tribunal considered this to be 'special circumstances'.

The appeal was allowed.

Sandra Krywald v HMRC (TC09312)

Electric charging points

Summary – The supply of electricity via third party operators was a supply of goods taxable in Sweden, while the fixed monthly fee for access to the network of charging points was a separate supply taxable in Germany.

Digital Charging Solutions GmbH is a German company, that supplies electric vehicle users in Sweden with access to a network of charging points.

The company provides real-time information on pricing and the availability of charging points, but the company has contracts with third party operators who provide the charging points. A fixed fee is payable monthly for this service.

Digital Charging Solutions GmbH customers choose to access charging points with a card or via an app, which registers their use with the relevant third-party operator.

The operators invoice Digital Charging Solutions GmbH monthly, who then invoice their customers for the electricity used as well as the fixed fee, which is charged regardless of whether any electricity is actually supplied in the month.

On 8 April 2022, Skatterättsnämnden (Revenue Law Commission, Sweden) issued a ruling stating that the supply made by Digital Charging Solutions GmbH constituted a complex transaction principally characterised by the delivery of electricity to users and that the place of delivery was to be regarded as being in Sweden.

Digital Charging Solutions GmbH argued that there were two separate supplies, being a supply of electricity and a supply of services to use the network. This supply of services was supplied where Digital Charging Solutions GmbH was located, in Germany. Consequently, the company claimed that only the supply of electricity should be taxed in Sweden.

Two questions were referred to the CJEU for a preliminary ruling:

1. Does a supply to the user of an electric vehicle consisting of the charging of the vehicle at a charging point constitute a supply of goods under [Article] 14(1) and [Article] 15(1) of [Directive 2006/112]?
2. If yes, is such a supply then to be deemed to be present at all stages of a chain of transactions which include an intermediary company, where the chain of transactions is accompanied by a contract at every stage, but only the user of the vehicle has the right to decide on matters such as quantity, time of purchase and charging location, as well as how the electricity is to be used?

Decision

The supply of electricity is deemed to be a supply of goods (Article 15 PVD). The CJEU found that the supply of electricity to the user of an electric vehicle using a charging point fell within this Article.

Digital Charging Solutions GmbH was not independently buying any electricity but was acting as an intermediary, on behalf of its customers who determined when, where and how much electricity was bought.

The electricity was supplied initially by the third-party operators to Digital Charging Solutions GmbH and then by Digital Charging Solutions GmbH to its customers.

Consequently, the provisions of Article 14(2)(c) applied to treat the supply as a supply of goods both to and from the intermediary.

The CJEU also considered whether this was a single or mixed supplies. As there was a fixed monthly fee that was payable irrespective of whether any electricity was actually bought, the CJEU concluded that the economic reality was that there were two separate supplies. The fixed fee was neither ancillary to the supply of electricity nor inseparable from this supply. This was a separate supply of services that was not taxable in Sweden.

CJEU (Case C-60/23): Digital Charging Solutions GmbH