

Review

Taxation & Benefits



The one about the VAT man and the temp

The recent tax case of *Reed Employment Limited v HMRC [2011] UKFTT 200 (TC)* potentially opens the door for employment agencies (“Agencies”) and their clients (“Placement Businesses”) to make claims for refunds of VAT and to pay less VAT going forward.

The decision

Reed Employment Limited had accounted for VAT on the full value of its supplies of temporary workers (“temps”) to clients. In 1997 Reed applied for a repayment of overpaid VAT on the basis that it should only have charged VAT on the commission element of its fees (i.e. the charges paid by the client to Reed less the wages paid by Reed to the temps and National Insurance contributions).

Reed’s argument was that it had acted as an intermediary in finding temps for its clients and had provided an introductory service on the grounds that the temps provided their services to the clients directly. HM Revenue & Customs (“HMRC”) argued that Reed had made supplies of staff to its clients as principal, the consideration for which was the whole amount charged to the client including amounts out of which Reed paid its overheads.

In reaching its decision the Tribunal looked at the “economic reality” of the supplies made by Reed to its clients. It found that Reed’s activities did not amount to a supply of staff because Reed did not exercise control over the temps at any stage, meaning that no control of the worker could pass from Reed to the client. Consequently, Reed made a more limited form of supply – an introductory service combined with a number of ancillary services (e.g. evaluating the worker’s skills, taking references and providing a payments service for the workers).

It followed that because Reed made supplies of introductory services, not of staff, VAT was only chargeable on the commission element of its fees, even though Reed invoiced its clients for a single, combined amount that included wages it paid to the temps and National Insurance.

Implications

The decision may be of comfort to Agencies and Placement Businesses that were adversely affected by the withdrawal of the Staff Hire Concession in April 2009, which allowed Agencies to charge VAT only on their commission if certain conditions were satisfied. Placement Businesses who only have partial VAT recovery will welcome the decision because it suggests that, in the right circumstances, they should have less VAT to pay on supplies of temps and they may wish to raise the decision with Agencies that they engage. Agencies may potentially be able to make themselves more attractive to Placement Businesses by structuring their arrangements to take advantage of the decision and reduce the VAT they are required to charge.

However, it is clear from the Tribunal’s decision that the facts and circumstances of each case will determine the VAT treatment of supplies of temps. Only where there is no control of the worker by the Agency, and the arrangements effectively amount to an introduction of the worker, will an employment business potentially be able to rely on the decision. Even then, it is currently unclear whether HMRC will appeal the decision. Placement Businesses and Agencies may therefore wish to wait for HMRC’s further reaction to the decision before relying upon it.

In the meantime Agencies may consider making a protective claim for a repayment of overpaid VAT on past supplies. Placement Businesses that only have partial VAT recovery may in turn wish to seek repayment of VAT from the Agencies they use. Agencies making claims to HMRC for repayments should be aware of the time limits for claims (recently increased to four years) and of potential defences capable of being put forward by HMRC, both of which were considered in Reed.

If you would like any further information about the decision in Reed or its implications for your business please contact any of the following members of the Taxation & Benefits practice:

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