



Case alert

Wellcome Trust Ltd

30 June 2020

Summary

Advocate General Hogan has issued his opinion in the case – a referral to the Court of Justice from the UK’s Upper Tribunal.

The issue is whether, in the circumstances, the company acts as a taxable person when it procures the services of third-country investment managers. If it does, then the place of supply of those services is the UK and the company is required to account for UK VAT under the reverse charge mechanism. If it does not, then the place of supply is where the investment manager is established and no liability to UK VAT arises.

HMRC considers that the company does act as a taxable person and that VAT is due in the UK, but the First-tier Tax Tribunal (FTT) allowed the company’s appeal. The FTT considered that, as the company’s investment activities are not regarded for VAT purposes as economic activities, it does not act as a taxable person. As such, it decided that the reverse charge mechanism did not apply to the bought-in investment management services where the investment manager was established outside the European Union.

HMRC appealed to the Upper Tribunal which decided to refer the case to the Court of Justice as it required assistance with the interpretation of the VAT Directive. Agreeing with HMRC, the Advocate General considers that the company does act as a taxable person and that, as a result, VAT is due in the UK. The full Court will issue its judgment in due course.

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Court of Justice – Advocate General’s Opinion – 25 June 2020

Whether the taxpayer acts as a taxable person when procuring investment management services.

This case demonstrates the complexity of VAT law. The Wellcome Trust Ltd is a long-established charitable organisation that has significant endowments. It procures the services of investment managers to manage its portfolio of investments and the issue in this case is whether, under the reverse charge mechanism, the company is required to account for UK VAT on the receipt of those services. HMRC considers that VAT is due whereas the company considers that the reverse charge does not apply as the place of supply of the investment manager’s services is where the investment manager is established.

The question at the heart of this case is whether the company acts as a ‘taxable person’ (as defined in the VAT Directive) when it procures the services of the investment managers. Article 44 of the VAT Directive stipulates that “the place of supply of services to a taxable person acting as such” is the place where that taxable person is established. The company argued that it did not act as a taxable person and that, as a result, the place of supply of the investment manager’s services could not be the UK. It followed that, if the place of supply was not the UK then the UK’s reverse charge mechanism could not apply either and no VAT was, therefore, due.

The First-tier Tax Tribunal had allowed the company’s appeal. It agreed that, when purchasing the investment manager’s services, the company did not act as a taxable person. The FTT based this finding on the 1996 judgment of the Court of Justice (the 1996 Wellcome Trust case) which found that the investment activities of the company were not to be regarded as ‘economic activities’ and that, as such, the company was not a taxable person in relation to those activities. The FTT’s logic was that, if the activities of investing the endowments was not an economic activity such that the company was not, or was not to be regarded as a taxable person for VAT purposes, then the procurement of investment management services should not be regarded as being procured by a taxable person acting as such either. The FTT therefore found that the company did not act as a taxable person when procuring the services and, consequently, the reverse charge did not apply.

The Advocate General disagrees. The expression “taxable person acting as such” has to be put into context and the objective being pursued by the particular legislation must be taken into account. Whilst the Court of Justice was right to say that the company did not act as a taxable person in relation to its investment activities, this does not read across into the place of supply rules contained in Article 44 of the Directive. The provisions of Article 43 also need to be taken into account. Those provisions deem that, for the purposes of determining the place of supply of services, a non-taxable legal person that is identified for VAT purposes (which is the case here) is to be regarded as a taxable person. It follows that all services rendered to a taxable person as defined in Article 43 of the VAT Directive, with the exception of those received for private purposes, are deemed to be supplied at the place where the recipient is established. The very objective of Article 43(1) of the VAT Directive is to ensure that taxable persons are to be treated in this fashion for the purposes of the place of supply rules even in respect of services used for activities or transactions which are not considered to be economic activities.

Comment – One can understand the logic of how the FTT reached its earlier decision. However, the Advocate General considers that logic to be wrong. Just because the company is regarded as a non-taxable person in relation to its own investment activities does not mean that it is not a taxable person acting as such when it buys in investment management services. The purpose of the place of supply provisions is to ensure taxation in the place of consumption. The reverse charge mechanism achieves that objective. We await the full court’s judgment in due course and will provide further comment when the judgment is published.