

Case Alert

VAT & Disbursements

First-tier Tax Tribunal rules that search fees are not disbursements

Summary

The First-tier tax Tribunal has recently issued a decision in the case of Brabners LLP (a firm of Solicitors). The case is an important one for conveyancing firms as both HMRC and the Tribunal consider that search fees cannot be treated as disbursements for VAT purposes.

The Tribunal considered that, on the evidence put to it, the search fees were incurred by the firm as principal and not as agent of the client. Accordingly, the conditions for treating the recharge of the search fee costs to the client as a disbursement were not met.

The proper analysis is to treat the recharge of search fees as part and parcel of the solicitor's services to the client and VAT was therefore due.

First-tier Tax Tribunal

In a recent decision (Brabners LLP – Case TC06093), the First-tier Tax Tribunal has ruled that search fees incurred by the firm which were passed on to the client as a disbursement should not be treated as outside the scope of VAT but as part and parcel of the conveyancing service supplied to the client.

It is common practice in the legal profession (especially in relation to conveyancing services) for the solicitors to request searches on behalf of their clients. HMRC's published policy on disbursements is that they can be treated as outside the scope of VAT provided that certain conditions are met. One of those conditions is that, when requesting searches, the solicitors must act as agent of the client. In the case of Brabners, the judge took the view that the firm was supplying conveyancing services. As part of that service, it owed its clients a duty to take reasonable care and skill. It routinely made property searches. This is because the client requires the firm, as solicitors, to ensure that the transaction can safely go ahead and expects the firm, as solicitors, to identify any risks or other factors adversely affecting the property being purchased or sold. As such, The client expects the Appellant to do all that is necessary for the transaction which includes making all relevant searches and inquiries, and to draw anything relevant in them to the client's attention. The judge found that, on that evidence, the searches are not requested as agent but as principal. The recharge to the client is simply further consideration for the supply of conveyancing services and, accordingly, could not be treated as a disbursement for VAT purposes.

Comment – this is only a First-tier Tax Tribunal decision and it is not binding on anyone other than the parties. The Law Society of England and Wales intervened in the hearing (arguing that the recharge of fees should be treated as a disbursement) but the judge has dismissed their arguments too. Whether or not the matter will be appealed further is not yet known but Solicitors and other conveyancers should be aware and take note of this decision.

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