

Case Alert

U-Drive Ltd – VAT & Vehicle repairs

Summary

The issue in this appeal to the Upper Tribunal was whether U-Drive Ltd could reclaim input VAT incurred on the cost of repairing a third party's motor vehicle.

U-Drive is a car hire company which hires motor cars to customers. In cases where the customer has a 'bump' with another motorist, the company offers the third party motorist to pay for the repairs to his vehicle.

U-Drive argued that it was entitled to reclaim the VAT charged to it by the repairing garage, but HMRC refused the claim. The First-tier Tribunal dismissed U-Drive's appeal and U-Drive appealed to the Upper Tribunal.

Upper Tribunal

The Upper Tribunal has issued its judgment in this case which concerns whether U-Drive is entitled to reclaim VAT incurred on the cost of repairing motor vehicles belonging to third parties. U-Drive is a car hire company and, in the course of its business, it hires vehicles to customers. Customers occasionally have accidents where they come into collision with other third party drivers. In an attempt to keep down the cost of vehicle repairs, rather than the third party claiming on his insurance, the company arranges for the third party's vehicle to be repaired by an appointed garage. U-Drive considers that, as it arranges the repair and pays the garage directly, it is entitled to reclaim the VAT charged to it on the cost of the repair. HMRC disagreed arguing that there was no supply of repair services to U-Drive. The First-tier Tribunal agreed with HMRC and U-Drive appealed to the Upper Tribunal.

In its judgment, the Upper Tribunal considers that the First-tier Tribunal was correct. Looking at the contractual position, there was no written contract between U-Drive and the repairing garages. What existed was an agreement to repair the third party car owner's vehicle with U-Drive agreeing to pay for those repairs. However, the economic reality was that U-Drive simply agreed to pay for the repair of the third party's vehicle in order to discharge its insurer's liability to indemnify the hirer's obligation to pay compensation to the third party car owner for the damage to his vehicle. U-Drive agreed with the third party to pay for the repairs because it had calculated that, by doing so, it would ultimately pay less than if the car owner had made a claim through his or her insurer. On the facts, the Upper Tribunal concluded that the supply of repair services was not made to U-Drive and, as such, it had no entitlement to deduct the input VAT incurred.

Comment – this is another case involving tripartite arrangements. Here, there were no written contracts between U-Drive and the repairing garages. As such, the Tribunal looked at the economic reality of the situation and concluded that the repair services were made to the third party car owner and not to U-Drive. U-Drive simply agreed to pay for the repairs in order to indemnify its customer's liability to compensate the third party owner. Simply agreeing to pay for the repairs did not entitle U-Drive to reclaim the VAT incurred.

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