

# Case Alert

## *Norseman Gold PLC v HMRC*

### *Summary*

It is possible to register for VAT in the UK as an 'intending trader' (that is a trader who does not yet make taxable supplies but intends to do so at some point in the future). This is usually required where the trader is in a preliminary stage of development and incurs input VAT on the purchase of goods and services. A VAT registration allows the trader to reclaim that VAT.

For input tax to be reclaimable the trader must intend to make taxable supplies. Taxable supplies are supplies of goods or services that are not exempt supplies and, crucially, in Norseman Gold Plc's case are made for consideration.

There are exceptions to this rule but, generally there is no supply if there is no consideration.

### Upper Tribunal

The Upper Tribunal has dismissed the taxpayer's appeal from the [First-tier Tax Tribunal's \(FTT\) decision](#) that it was not entitled to reclaim input tax it had incurred on various costs.

Norseman Gold Plc (Norseman) took the view that it was entitled to reclaim the VAT as it intended – at some future date – to make taxable supplies of management charges to its subsidiaries. On the evidence HMRC took the view, and the FTT agreed, that there was no firm agreement between Norseman and its subsidiaries as to how much the charges would be and when exactly the management charges would be made. The subsidiaries were making losses (prospecting for gold in Australia) and Norseman did not see the point of raising management charges in a situation where the subsidiaries would have had to have been funded by it in order to pay for the services.

The FTT concluded that the services provided by Norseman to its subsidiaries were certainly capable of being classified as taxable supplies save for one crucial omission. For VAT purposes, there can be no supply if there is no consideration. Consideration is founded on reciprocal performance of obligations and in this case, while Norseman provided services to its subsidiaries, on the evidence before the Tribunal, there were no arrangements in place for the subsidiaries to provide payment in return. The FTT considered this as fatal to Norseman's case and dismissed its appeal.

At the Upper Tribunal, Norseman argued that, provided that there was an intention to pay for the services at some point in the future, that was enough to make the supplies taxable supplies. The Upper Tribunal disagreed and upheld the FTT's decision.

**Comment – It was not enough for Norseman to argue that the consideration for the supply would be calculated at some future point if and when the subsidiaries were in funds and were able to pay. Consideration – that which is given in return – needs to be certain at the time of supply if what is being provided is to be regarded as a supply.**

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