

Case alert

HMRC v Volkswagen Financial Services (UK) Ltd

May 2018

Summary

This is a long-running dispute between VWFS and HMRC that has ended up at the UK's Supreme Court.

The issue – whether VWFS is entitled to reclaim input VAT incurred on its overheads is, on the face of it, a relatively easy matter. However, as VWFS (like many other operators in the motor vehicle sector) purchases cars from dealers and re-supply them to customers at cost. VWFS then enters into a credit agreement with the customer and makes its profit on the deal from its supply of credit.

HMRC's view is that, as there is no profit made on the sale of the car, the overheads of the business must be a part of the profits made from the supply of credit and as the supply of credit is exempt from VAT, HMRC argues that the VAT incurred on overheads is not reclaimable.

The Advocate General considers that view to be correct but considers that the UK's treatment of HP supplies as two separate transactions (one taxable and one exempt) is contrary to EU VAT law. He considers that the supply of a car on an HP deal is a single supply for VAT purposes and that supply is a taxable supply of the car. If the full court agrees with the AG, this will have a major impact on the supply of goods on HP in the UK.

Advocate Generals Opinion released 3 May 2018

The Advocate General has released his opinion in this case which centres around the VAT treatment and associated input tax recovery of a business supplying cars on hire purchase (HP) contracts..

Volkswagen Financial Services (UK) Limited (VWFS) provide finance to customers wishing to purchase motor vehicles. VWFS provided them with credit under hire purchase agreements. To conclude the arrangements VWFS firstly acquire the car from the dealer. It is then supplied at the same price to the customer who pays for the vehicle in monthly instalments over a period. At the end of the contract legal ownership passes from VWFS to the customer. The credit agreement identifies the price of the car and the amount of interest payable over the term. In the UK HMRC regards the contract as being two supplies. The supply of the car - which is taxable and the supply of credit – which is exempt. The business is therefore partially exempt and cannot recover the input tax attributable to its exempt finance activity. The CJEU has been asked to consider whether VAT incurred on the business' overhead costs could be in part attributed to the taxable supply of the car or attributed wholly to the supply of interest.

The Advocate General has released his opinion which will be considered by the full court of the CJEU at a later date. His opinion is not binding on the Court and there are occasions where it reaches a different conclusion. In a somewhat surprising opinion, the Advocate General considered firstly the question as to the attribution of the overhead input tax to the businesses supplies. It was clear on the facts that some business resources must have been consumed in making the supplies of the car however that did not give a right to recover. As the vehicles were supplied on at the same price all of the overhead of the business must form a cost component of the exempt supply of credit. As a result no input tax incurred by the business (other than the cost of the cars themselves) should be recovered.

However the Advocate- General then considered whether the UK treatment of hire purchase transactions was correct. In his view HMRC's interpretation that there are two separate supplies was artificial and is contrary to the provisions of the Principal VAT Directive. Instead they should be treated as a single complex taxable supply. The credit element being incidental rather than separate. He did not consider that the consumer credit regulations requirement that the interest be identified on the agreement meant that it was a supply in its own right. Based on this view VWFS would be entitled to recover all of its input tax but only at the expense of accounting for output tax on the supply of credit. (ie on the interest charged)

Comment – The Advocate General has supported HMRC's view that input tax incurred by a business providing hire purchase finance is attributable to its exempt activity and not the provision of the goods. However his conclusion that the agreements are taxable supplies will create uncertainty within the finance industry. Providers of consumer finance will be concerned about the potential implications of accounting for output tax on interest in the future. However opportunities might arise for providers, particularly of business finance to make retrospective claims

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