

Case Alert

Adecco – VAT & Temporary Workers

Summary

This was an appeal by Adecco (and others) from the decision of the First-tier Tribunal (FTT). The case relates to whether Adecco supplies temporary workers to its clients and, thus whether it should account for VAT on the full amount received from its clients.

Adecco considers that it simply introduces the temporary worker to the client and that, as a result, VAT is due only on the 'commission' it charges to its client for that introduction.

The FTT considered that VAT was due on the full amount received but gave permission to Adecco to appeal to the Upper Tribunal.

The Upper Tribunal has dismissed Adecco's appeal.

Upper Tribunal

The Upper Tribunal has issued its judgment in this long-running VAT case. The main issue in the case is whether Adecco is entitled to account for VAT on the 'commission' it charges its clients for the service of introducing a temporary worker. HMRC considers that VAT is due on the full amount received from clients. In essence, HMRC is of the view that the temporary worker supplies its services to Adecco and then Adecco supplies those services to its client. As such, there is a single supply by Adecco to its clients and the full payment made by the clients is the consideration for that supply.

The FTT came to the conclusion that the contractual position was key to resolving the dispute. Essentially, it found that the temporary worker owed a contractual obligation to Adecco - and not to Adecco's client. Similarly, the client was obliged under its separate contract with Adecco to pay for the services supplied by the worker. Crucially, at no time did the client or the temporary worker owe each other any obligations under a contract. With that in mind, the FTT found that there was a supply of the worker to the client and, in those circumstances, the only conclusion it could draw from a VAT perspective was that VAT was due on the full payments received from the client.

In a short judgment, the Upper Tribunal has dismissed Adecco's appeal. Citing Lord Neuberger's judgment in the Supreme Court's Airtours PLC judgment, the Tribunal agreed that the contractual position between both Adecco and the temporary worker and Adecco and its clients meant that the FTT's decision was correct. The starting position in any analysis or enquiry about the nature of a supply is to examine the contracts between the parties. It is only if the contractual terms constitute a purely artificial arrangement that one should look elsewhere.

Comment – it was clear to both the FTT and to the Upper Tribunal that the contractual obligations between the parties were the key to resolving this dispute. There was no question here that the arrangements were artificial or a sham. The supply was not just an introduction service and, as such, VAT was due on the full consideration (including the worker's wages etc) received from the client.

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