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Case alert

Marriott Rewards LLC & Whitbread Group PLC v HMRC

May 2018

Summary

The Upper Tribunal has issued its judgment in this case which relates to the operation of the Marriott Rewards scheme. Marriott Rewards LLC is a US company – a wholly owned indirect subsidiary of Marriott International Inc which is the ultimate parent of the Marriott Group. The group owns, operates, franchises and licenses hotels under a number of brands (including Marriott) and Marriott Rewards LLC operates the group's customer reward scheme.

There were two issues in the case. Firstly, whether the payments made by Marriott Rewards LLC to participating hotels should be regarded as third-party consideration for the hotel's supply of accommodation and other services to customers redeeming reward points or whether the payment was consideration for a supply of services by the participating hotel to Marriott Rewards LLC?

Secondly, if the payment was consideration for a supply of services by the hotel to Marriott Rewards LLC, what was the nature of that supply. Marriott argued that it was a supply related to land (and thus a supply which took place in the UK). Whitbread argued that it was a supply of advertising services (ie promoting the Marriott brand) which should not be subject to UK VAT.

Upper Tribunal Judgment released 30 April 2018

The Upper Tribunal has released its judgment in this case which centres around the VAT treatment of a customer loyalty / rewards scheme operated by the well-known Marriott group.

Marriott Rewards LLC (MRL) is the group company responsible for the operation of the rewards scheme. In simple terms, a customer staying at a participating Marriott branded hotel can earn reward points the value of which is dependent on the amount spent at the participating hotel. MRL allocates points to the customer and charges an amount to the participating hotel. Once earned, a customer is entitled to 'cash-in' or redeem his points at any participating hotel. The 'redemption' hotel provides free or discounted accommodation and other services to the customer to the value of the points redeemed and then claims a payment from MRL. It was in respect of this payment that the Tribunal was required to decide the correct VAT treatment.

HMRC contended that the payment by MRL to the redemption hotel was or was to be regarded as third-party consideration for the supply of the accommodation and services by the hotel to the customer. As such, MRL would not have been entitled to reclaim the VAT paid to the hotel as input tax because there would have been no supply made to MRL. In the end, the Tribunal decided that, under the terms of the contract between MRL and the redemption hotel the payment made by MRL was not third-party consideration. The redemption hotel was contractually obliged to provide redemption services to MRL. In effect, the Tribunal confirmed that the redemption hotel actually made two supplies – a free supply of accommodation etc to the customer and a supply of redemption services to MRL for which the payment made by MRL was consideration. Accordingly, the Tribunal held that HMRC's contention that the payment was third-party consideration was incorrect.

The Tribunal then had to consider what was the true nature of the supply of redemption services made by the redemption hotel to MRL? MRL contended that, during the period in question (which post-dated 1 January 2010), the redemption service related to land situated in the UK. In other words, the supply of the hotel room to the customer by the redemption hotel was a land related supply with the place of supply being the UK. As such, the place of the hotel's supply to MRL should also be treated as taking place in the UK which would have given MRL the right to reclaim the VAT charged to it by the hotel as input tax.

Whitbread – a redemption hotel – argued that by participating in the Marriott Rewards scheme, it was, somehow promoting the Marriott brand such that, prior to 1 January 2010, when it received payment from MRL for redemption services, the service it provided ought to be regarded as advertising services. In such circumstances, the place of supply would have been outside the UK and no output VAT liability would have been due. The First-tier Tax Tribunal (FTT) determined that the supply made by redemption hotels was neither land related, nor advertising services.

Comment – The Upper Tribunal agreed with the findings of the FTT. The services provided by the redemption hotel were, merely, redemption services and the place of supply prior to 1 January 2010 was the UK and after that date the US. In the event, both MRL and Whitbread's appeals were, therefore dismissed. Another complex business promotion scheme that created VAT issues for both the promoter of the scheme and participants.

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