



TC01728

Appeal number: TC/2010/6995

VAT – Registration – Supply of services – Training courses – Advance payments – Threshold for registration – Whether time of supply rules apply when deciding when threshold exceeded – Yes – VATA 1994 s.6.4, Sch 1 para 1 – Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

**BROMLEY EMERGENCY TRAINING
AND DEVELOPMENT LTD**

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE THEODORE WALLACE

Sitting in public in London on 12 December 2011

Robert Stell FCCA, of Bradbury Stell, for the Appellant

Hugh O'Leary, of the Appeals and Reviews Unit, for the Respondents

DECISION

1. This appeal concerns the date on which the Appellant was liable to be registered for VAT. The Appellant appeals against the decision that it was registrable with effect from 1 September 2008 contending that the correct date was 1 November 2008.

2. The Appellant provides training courses of one or two days in emergency medicine to post-graduate doctors. It was incorporated on 5 July 2007 and delivered the first course on 24-25 October 2007.

3. The issue concerned the treatment of pre-payments received for courses in determining when the Appellant exceeded the registration threshold under Schedule 1, paragraph 1 of the VAT Act 1994 which was £67,000 in 2008/09.

4. Mr Stell submitted that on recognised accounting principles the payments could not be recognised as income until the courses relating to the payments were delivered.

5. Mr O'Leary submitted that the time of supply provision of section 6 of the VAT Act 1994 apply when a person is liable to register under Schedule 1.

6. There was no dispute as to the facts.

7. A schedule provided by the Appellant showed the payments received for each course starting with a course on 24-25 October 2007. This showed that a total of £62,690 was received for six two day courses up to June 2008 and a one day ultrasound course. By the end of July 2008 a further £6,000 had been received for a course on 1-2 September and £550 for a course on 28-29 October; if the latter payments fall to be included, the Appellant exceeded the threshold in July and was correctly registered with effect from 1 September under paragraph 5 of Schedule 1.

8. The courses were advertised in the Lancet and on a website. The courses required organisation including room hire, booking of lecturers and catering. The Appellant had computer equipment and projectors.

9. The director was an NHS consultant as were the other lecturers. The courses were at week-ends so as not to conflict with their work. The students were qualified doctors; the courses counted towards upcoming examinations.

10. During the relevant period the Appellant did not have the necessary finance to organise courses without pre-payments. On all of the courses in question all payments by students were in advance, apart from £1,680 received after the very first course. After the initial four courses most payments were made by internet. The payments for the course in June indicate over 50 students.

11. There was no evidence as to the contractual basis on which the payments were made. No advertisements were exhibited nor was there any evidence of how payments were acknowledged and how the details of courses were given.

5 12. Mr Stell said that courses were provisionally fixed subject to confirmation and were subject to cancellation if there was not sufficient support, although none had been cancelled in fact; the payments were not deposits but full payments not partial deposits. There was no evidence as to return of payments if a student could not attend. Mr Stell said that it was not run as a normal business; the principal purpose
10 was not commercial but to meet a perceived need. The director had not taken any payment although the accounts showed a profit.

13. Section 6 provides so far as relevant as follows:

15 “6(1) The provisions of this section shall apply ... for determining the time when a supply of goods or services is treated as taking place for the purposes of the charge to VAT.

...

20 (3) Subject to subsections (4) to (14) below, a supply of services shall be treated as taking place at the time when the services are performed.

(4) If, before the time applicable under subsections ... (3) above, the person making the supply issues a VAT invoice in respect of it or
25 if, before the time applicable under subsection ... (3) above, he receives a payment in respect of it, the supply shall, to the extent covered by the invoice or payment, be treated as taking place at the time the invoice is issued or the payment is received.”

None of the other subsections is relevant.

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14. Schedule 1, paragraph 1 provided for 2008/09:

35 “1(1) Subject to sub-paragraphs (3) to (7) below, a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule –

(a) at the end of any month, if the value of his taxable supplies in the period of one year then ending has exceeded £67,000; or

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...”

Sub-paragraphs (3) to (7) are not relevant. Section 4(2) provides that a taxable supply is a supply of goods or services in the UK which is not exempt.

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15. Mr Stell did not contend that section 6 and subsection (4) in particular is not relevant when applying Schedule 6, paragraph 1. Paragraph 1(a) applies at the end of

the month when taxable supplies exceed the threshold. For this purpose it is necessary to determine the time of supplies. Section 6(1) provides for determining when a supply is treated as taking place “for the purposes of the charge to tax” which must include registration.

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16. Mr Stell pointed to section 6(3) which states that a supply of services is treated as taking place when the services are performed. However subsection (3) is subject to subsection (4) which expressly covers “a payment in respect of it” (a supply of services) before the time under subsection (3). His suggestion that subsection (4) does not cover a supply which has not taken place is untenable given the wording of subsection (4).

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17. He submitted that although subsection (4) applies when there is a binding agreement for a supply of services, there is no binding agreement here.

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18. In my judgment the acceptance of the payments did give rise to a binding agreement in the absence of clear evidence to the contrary. There was no such evidence and it seems to me that it would have been unreal to imagine that courses could have been cancelled at any time without proper reasons.

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19. In any event a payment would in my judgment be “in respect of” the course for which it was paid even if there was not a contractual obligation to provide the course. A payment is in respect of a supply if it is in consideration of a supply. Consideration is a concept of EU law and does not require a legal obligation provided that there is a direct link.

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20 Mr O’Leary accepted that section 6(4) has the effect that the advance payments received before 1 September 2008 and thus before registration are not subject to VAT : this covers nearly all of the September course, a substantial part of the October courses and part of the November course.

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21. Finally, the VAT Act 1994 must be interpreted so as to comply with EU law. Article 65 of the VAT Directive, 2006/112/EC provides as follows:

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“Where a payment is made on account before the goods or services are supplied, VAT shall be chargeable on receipt of the payment and on the amount received.”

Section 6 of the VAT Act 1994 is fully in accord with Article 65. The fact that recognition of profit and receipts and expenditure for accounting purposes and for direct tax is immaterial because the concept of time of supply for VAT is wholly different.

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22. The appeal is dismissed.

23. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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THEODORE WALLACE
TRIBUNAL JUDGE
RELEASE DATE: 6 January 2012