



**TC03493**

**Appeal number: TC/2012/06060**

*VAT – taxi service – fares collected by taxpayer from account customers and paid to non-taxable drivers – identity of drivers not known to customers in advance – whether tax due on fares so collected and then passed on – principles of agency – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROGER FREDERICK LAFFERTY  
SUSAN CHRISTINE LAFFERTY**

**Appellants**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY  
MRS SHARWAR SADEQUE**

**Sitting in public at 45 Bedford Square, London, on 12 March 2014**

**Mr Martin van Beek for the taxpayers**

**Mr Leslie Bingham of HMRC for the Crown**

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## DECISION IN PRINCIPLE

### *Introduction*

1 This appeal relates to the tax payable, or not, in respect of the fares paid by persons  
holding an account with the taxpayers and passed on to self-employed independent  
5 taxi drivers who are not VAT registered, and who undertake the journeys requested by  
the account-holder customer. Mr van Beek who represented the taxpayers also gave  
sworn evidence on their behalf; apart from that, the evidence we received was entirely  
documentary.

### 10 *Facts*

2 The appeal is against assessments made under section 73(1) of the Value Added Tax  
Act 1994 totalling £107,936 made on 13 December 2011 and 7 February 2012 for the  
periods 12/07 to 12/08 and 03/09 to 03/11. The commissioners' review decision of 8  
May 2012 upheld these assessments.

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3 The taxpayers are in partnership owning and maintaining a fleet of cars, carrying on  
business with them under the style of 'Nightingale Cars'. A dozen or so cars  
equipped with radios are used for a taxi service which is marketed by the taxpayers as  
'Castle Taxis', and they are hired out by the taxpayers to individual taxi drivers who  
20 are self-employed, wear no uniform and are not VAT registered. The cars do not bear  
the firm's name, though one of them has Castle's telephone number displayed on its  
roof. The taxpayers are responsible for the maintenance of the vehicles, their  
insurance and their fuel, and advertise the service provided through Castle Taxis,  
including paying the cost of a Freephone at two supermarkets. The hire of the cars is  
25 paid for weekly by reference to the mileage travelled in them, each driver making  
payment direct to the taxpayers.

4 When the drivers pick up a customer who pays in cash they keep the fares they have  
received (at the tariff set by the local authority) which, as far as the drivers are  
30 concerned, offsets the hire charge for their cars and leaves them with a profit, which is  
their income. If a customer has no cash, he or she can pay by credit card, in which  
case the customer telephones the taxpayers' office and they receive the fare as payee  
direct from the customer; at the end of the week, it is credited to the driver by being  
offset against what the driver owes in respect of the mileage payment due for the car.  
35 No issue arises in respect of these two types of transaction, but the matter in  
contention relates to account customers.

5 These are persons who have an account with Castle Taxis and from time to time  
telephone them to request taxi service. Castle Taxis then organise one of the drivers  
40 to attend the account customer and provide whatever service is required. The account  
customer does not know who the driver sent out will be, although it will be one of  
those who hire cars from the taxpayers. The driver notifies Castle Taxis of the fare  
incurred and the account customers then settle their bill with Castle Taxis at the end  
of the relevant period, usually a month; Castle Taxis subsequently account to the  
45 driver for what they have received from the account customer, with the driver bearing  
any bad debts there may be. Drivers may and sometimes do suggest to customers  
from among their cash clientele to become account customers.

6 There is no written agreement with account customers and we were given no  
example of an invoice to such a customer, but the evidence is that the invoice records  
the journeys provided, the dates on which they were provided, but not the name or  
identity of the driver or any separate charge for VAT; Castle Taxis' VAT registration  
5 number is shown, but the invoice does not amount to a VAT invoice. The customers  
do not know what arrangements exist between the drivers and the taxpayers and they  
enjoy no special privileges or treatment – for example, in regard to fares – but it is  
accepted that as far as such a customer knows he or she is dealing with Castle Taxis,  
whose name alone heads the invoice. The fares are the same local authority regulated  
10 fares as are paid by cash or credit card customers.

### *Legislation*

7 The Value Added Tax Act 1994 provides:-

15 4(1) VAT shall be charged on any supply of goods or services  
made in the United Kingdom, where it is a taxable supply made by  
a taxable person in the course or furtherance of any business  
carried on by him.

20 (2) A taxable supply is a supply of goods or services made in the  
United Kingdom other than an exempt supply.

5(1) Schedule 4 shall apply for determining what is, or is to be  
treated as, a supply of goods or a supply of services.

(2) Subject to any provisions made by that Schedule and to  
Treasury orders under subsection (3) to (6) below-

25 (a) "supply" in this Act includes all forms of supply, but not  
anything done otherwise than for a consideration;

(b) anything which is not a supply of goods but which is done for a  
consideration (including, if so done, the granting, assignment or  
surrender of any right) is a supply of services.

30 19(1) For the purposes of this Act the value of any supply of goods  
or services shall, except as otherwise provided by or under this  
Act, be determined in accordance with this section and Schedule 6,  
and for those purposes subsections (2) to (4) below have effect  
35 subject to the Schedule.

(2) If the supply is for a consideration in money its value shall be  
taken to be such amount as, with the addition of the VAT  
chargeable, is equal to the consideration.

40 (3) If the supply is for a consideration not consisting or not wholly  
consisting of money, its value shall be taken to be such amount in  
money as, with the addition of the VAT chargeable, is equivalent  
to the consideration.

47(1) Where—

45 (a) goods are acquired from another member State by a person  
who is not a taxable person and a taxable person acts in relation to  
the acquisition, and then supplies the goods as agent for the person  
by whom they are so acquired; or

50 (b) goods are imported from a place outside the member States  
by a taxable person who supplies them as agent for a person who is  
not a taxable person, then, if the taxable person acts in relation to  
the supply in his own name, the goods shall be treated for the  
purposes of this Act as acquired and supplied or, as the case may  
be, imported and supplied by the taxable person as principal.

(2) For the purposes of subsection (1) above a person who is not resident in the United Kingdom and whose place or principal place of business is outside the United Kingdom may be treated as not being a taxable person if as a result he will not be required to be registered under this Act.

(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent.

(3) Where . . . services are supplied through an agent who acts in his own name the Commissioners may, if they think fit, treat the supply both as a supply to the agent and as a supply by the agent.

73(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.

. . .

(6) An assessment made under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following-

(a) 2 years after the end of the prescribed accounting period; or  
(b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment comes to their knowledge . . .

77(1) Subject to the following provisions of this section, an assessment under section 73, 75 or 76 shall not be made-

(a) more than 4 years after the end of the prescribed accounting period...

#### *Submissions for the taxpayers*

8 For the taxpayers, Mr van Beek submitted that the starting point was that HMRC accepted that, in respect of cash and credit card work, the taxpayers acted as agent for the drivers. Mr van Beek then referred to HMRC's published guidance and said that it appeared to be derived, in part, from the outcome of various cases which explore the point in question, namely: *Triumph and Albany Car Service* (LON/80/115), *Frederick George Corless* MAN/89/673 (confirmed at QB (1993) STC 632) and *Camberwell Cars* (LON/92/2176A).

9 These decisions examined whether there are genuine differences between the driver/taxi firm relationship for the operation of cash or account work, though it was accepted that none of the appellants in those cases operated their business in the same way as Castle Taxis. Further decisions of relevance were: *Akhtar Hussain {t/a Crossleys Private Hire Cabs} – V& DTr 30/7/99*; *Argyle Park Taxis Limited v The Commissioners for Her Majesty's Revenue and Customs* MAN/06/0755; *Bath Taxis (UK) v The Commissioners for Her Majesty's Revenue and Customs – LON/2007/1767*.

10 Mr van Beek submitted that these additional cases built upon some of the principles derived from the earlier cases, including five factors which may be used to help determine whether there was a genuine difference which resulted in the firm providing taxi services for the account customers as principal, rather than as  
5 agent for both cash and account work, or vice versa.

11 In *Akhtar Hussain*, the position that the appellant acted as agent for cash work was not in dispute, as in the present case. It was successfully contended by the Revenue that there were differences between cash and account work; it was held that  
10 there were five factors arising from earlier case law to determine whether a difference resulted from the two types of transaction. The five factors identified were:

- The taxi firm, not the drivers, bore the risk of bad debts for account customers; in practice, there was no history of bad debts in the present case, but the drivers would bear any bad debts that there were.
- 15 • The taxi firm allowed discounts to account customers and bore the cost of the reduced income resulting; none were given in the present case.
- The taxi firm set the fares for account work; in the present case, the fares were as set by the local authority for all types of work.
- The taxi firm recorded all account work; in the present case, Castle Taxis only  
20 record the details necessary to the account customers on behalf of the drivers.
- The taxi firm's roster ensured adequate coverage for both cash and account work; in this case, it was up to the drivers when and if they worked and, if there was no adequate cover for the demand there was no preference given to either type of business, each job being responded to in the order that it arose.

25 12 *Akhtar Hussain* therefore supported the taxpayers' case, because it demonstrated the nature of the differences between cash and account customers which must exist for there to be a difference in their treatment for VAT purposes. *Argyle Park Taxis* similarly supported the taxpayers' case, since it too highlighted the nature of the differences between cash and account work. With regard to the five factors the  
30 position was:

- Any failure to pay by the account customers was not passed on to the drivers; Castle Taxis could insist on the drivers bearing the loss, although in practice there had been no need for this.
- 35 • The methods of payment for the two types of business differed and was based on average fares required; in the present case, all fares for all types of business were the same.
- The taxi firm chose only certain drivers for account work; Castle Taxis worked on a first come, first served, basis.
- 40 • The taxi firm negotiated the account contracts; Castle Taxis did not negotiate terms or have any formal contract with account customers.
- The taxi firm acted as principal for the account customers and payment for such work was on a different scale and system and there were substantial differences between the *modus operandi* for its account work and its cash  
45 work; Castle Taxis' drivers were entitled to the full fare chargeable.

13 Lastly, in *Bath Taxis* there were specific, pre-existing contractual arrangements with account customers which afforded them a priority service and a fixed-rate pricing structure, which were significant factors in determining that the taxi firm was  
50 acting as principal. Here, there is no significant difference in the arrangements for

5 cash and account customers which could result in the account customers being treated as being supplied by Castle Taxis as principal, so that in relation to the period assessed the taxpayers have always acted as agent in respect of both cash and account work, and therefore only made a taxable supply of services to the drivers for the hire of cars, radios etc., the tax on which was fully accounted for.

10 14 Mr van Beek accepted that, in respect of its account customers for the period assessed, Castle Taxis did not clearly show on its invoices that it was collecting fares on behalf of the drivers. Since the initial inspection and after advice provided by HMRC however, the firm had amended its invoices issued to account customers to show details of the drivers undertaking each journey. Based on these changes, the Revenue had accepted that Castle Taxis is acting as agent for both cash and account work. It is submitted that this minor amendment to the invoice is not enough to change the fundamental nature of the supplies at issue, and demonstrates that there is no genuine difference in the way cash and account work is operated by the business and its drivers.

#### *Submissions for HMRC*

20 15 HMRC accept that Castle Taxis is acting as agent in respect of cash work carried out by the drivers, even when the customer pays the fare by credit/debit card and this is subsequently paid to the driver. There appears to be no dispute between the parties that the 'rental' charges made to the drivers are liable to VAT at the standard rate.

25 16 The taxpayers have referred to the decisions in the appeals of *Akhtar Hussain T/A Crossleys Private Hire Cabs*, *Argyle Park Taxis Ltd* and *Bath Taxis (UK) Ltd* in support of their argument that they are not acting as principal in respect of account work. It is noted in all three of those appeals that the tribunals found that the appellants were so acting. The decisions in those appeals were arrived at on the basis that there was a clear distinction between the way cash and account work was dealt with, though the taxpayers maintain that there is no such distinction in this case. HMRC contend that there is in fact a clear distinction between cash and account work.

35 17 Thus, in the case of account work, the account customer will contact Castle Taxis, who will arrange for the nearest driver to do the job – the account customer cannot contact a driver directly. It is understood that Castle Taxis do not specify which drivers should do which work. It is therefore HMRC's position that the supply of the taxi is being made by Castle Taxis to the account customer. In the case of account work, the driver notifies Castle Taxis of the amount to be charged to the customer while there is no requirement for the driver to notify them of the value of cash fares but only total miles travelled. Castle Taxis raise invoices to account customers showing the journeys made in the period in question, with Castle's details and their VAT number and include the VAT in question in their records.

45 18 The VAT & Duties Tribunal considered a similar situation in the case of *Starline & Wessex Taxis* (VTD 20294) finding that the appellant in that appeal was acting as principal in respect of account work. There is a clear distinction between the way the account and cash work is carried out, indicating that the taxpayers are in their business as Castle Taxis are acting as principal in respect of account work, making two distinct supplies, one of taxi journeys to their account customers and one of rental

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charges to the drivers. It is therefore incorrect to set-off against the amounts charged to the drivers a sum equivalent to the value of account work done by them.

19 The assessments were accordingly correctly issued in accordance with sections  
5 73(6) and 77(1) of the Value Added Tax Act 1994.

### *Conclusions*

20 The question whether, in the contested case of the account customers, the  
10 taxpayers as Castle Taxis act as agents for the drivers or as principals must be looked  
at primarily in terms of the relations between those two parties, although the account  
customer's perceptions may contribute to that analysis.

21 In the present case, the facts point to a relationship which is akin to that obtaining  
15 where the drivers' customers pay by cash or credit card: the fare collected from the  
customer is calculated according to the same local authority regulated tariff; no  
particular driver or drivers are selected for account work and, as in the case of cash  
customers, the rule is first come first served; the payment mechanism for getting the  
20 fare money to the drivers for account work parallels that where customers pay by  
credit card, Castle Taxis acting both instances simply as the collector of the fare  
money; no driver is obliged to respond to a request by an account customer, any more  
than he or she is obliged to be present at the rank to get work; a bad debt in the case of  
an account customer is a loss to the driver, not to Castle Taxis.

22 As against this, the account customer may conclude – especially from the invoices  
25 used during the periods of assessment – that he or she is dealing with a firm running a  
taxi service staffed by drivers whom the firm controls. That is a possible inference  
from the facts, which would be encouraged by the absence of any reference on the  
invoice to the individual driver who has provided the service, but not we think  
30 sustained by the relations actually existing between the drivers and Castle Taxis. The  
essence of the taxpayers' business is to maximise the rentals paid for the use of their  
cars, so that more business they put in the way of the drivers the greater the income  
they receive from the hire charges paid for the cars.

23 While each case must, as has been remarked in the decisions cited, be decided on  
35 its facts, it is noteworthy that in many of those relied on by Mr Bingham to show that  
the taxi firm acted as principal in relation to account customers, the circumstances  
were materially different. Thus, in *Akhtar Hussain* the taxi firm carried the risk of  
bad debts, it provided discounted fare rates at its own expense, and made sure that  
40 there were always drivers available for account customers, none of which is the case  
in this appeal. In *Argyle Park Taxis*, the taxi firm again carried the risk of bad debts,  
charged different fares for account work, selected the drivers for such work, and  
negotiated contracts with customers, none of which again is the case here. In *Bath*  
*Taxis*, the only similar feature of account business was the invoicing.

45 24 We have not found the decision in *Starline* helpful in this case, since there the  
situation was characterised by a formal and more complicated contractual relationship  
between the drivers and the firm, and because our analysis of the facts in this case  
corresponds to the third archetype identified at paragraph 22(4) of that decision – see  
50 also paragraph 28(viii). We conclude that in this case the taxpayers acted in regard to  
account customers as agents for the drivers – albeit perhaps as agents for undisclosed  
principals – and that the appeal therefore in principle succeeds.

25 The appeal papers indicated that there was in any event a further issue in regard to the assessments on quantum, which may in the event now not need to be addressed. If it does, the parties are at liberty to apply to the tribunal within 30 days of the release of this decision.

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*Further appeal rights*

26 Any party dissatisfied with this decision has a right to apply in writing 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 the tribunal no 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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**MALACHY CORNWELL-KELLY  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 April 2014**

