



TC04334

Appeal number: TC/2014/01714

VAT – input tax – whether input tax on legal fees were attributable to taxable supplies – no – VATA s 24 and s 26 – appeal not allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CHARLES DORIAN LISSACK

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
 MRS GILL HUNTER**

Sitting in public at 45 Bedford Square London on 10 November 2014

The Appellant did not attend and was not represented

Mrs Ann Sinclair, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Charles Dorian Lissack (“the Appellant”) against the decisions of The Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) (a) to amend a return and disallow credit for input tax in the sum of £8,817.83 claimed in the Value Added Tax (“VAT”) period 1 June 2012 to 31 August 2012 (“08/12”), pursuant to sections 24, 25 and 26 of the VAT Act 1994 (“the Act”), and by association (b) to issue a Value Added Tax Notice of Assessment disallowing input tax in the sum of £17,410.89 claimed in VAT periods 05/11, 11/11 and 02/12 pursuant to sections 24, 25 and 26 of the Act.

2. The Appellant did not attend the hearing and was not represented. The Tribunal was nonetheless satisfied that the Appellant had been notified of the date, time and venue of the hearing and that it was in the interests of justice to proceed.

Background

3. The Appellant completed an application for VAT registration on 9 March 2011 notifying the Commissioners that:

- his main business activity was that of a property consultant;
- the application was on the basis of a voluntary registration with the intention to make taxable supplies of £75,000 in the next twelve months; and
- he wished to be registered with an effective date of registration (“EDR”) of 1 March 2011.

4. The Appellant was duly registered with effect from 1 March 2011.

5. On 11 September 2012 HMRC received the Appellant’s 08/12 VAT return. The total VAT due on sales was declared as nil. VAT reclaimed on purchases was declared as £16,979.50, resulting in a net amount in that sum being due to the Appellant.

6. Following receipt of the 08/12 return an Officer of HMRC visited the Appellant on 1 November 2012. The purpose of the visit was to undertake checks to establish the credibility of the repayment and thus verify the claim.

7. At this visit, HMRC established that the Appellant had been involved in a court case that involved a business dispute that started in 1996 and that the following amounts for legal fees had been reclaimed as input tax:

	05/11	£2,060.00
35	11/11	£9,216.03
	02/12	£6,134.86
	08/12	£8,817.83

8. HMRC made further enquiries and established that the dispute related to a multi-million pound claim over the restoration of St Pancras Hotel, which saw the building returned to its former Victorian gothic splendour. The Appellant was formerly a consultant to MLCL and worked on the redevelopment of the Grade I listed St Pancras Chambers building above the station. He had filed a claim against the developers, Manhattan Loft Corporation Ltd (“MLCL”), for a quarter of the profits from the project. The Appellant says that MLCL owed him a finder’s fee for introducing the company to the owner of the site, London and Continental Railways.

9. HMRC advised the Appellant that the input tax claimed in respect of legal fees would be disallowed on the basis that it did not relate to the activities of the Appellant’s VAT registered business.

10. HMRC advised that:

(1) the 08/12 return would be adjusted to disallow £8,772.83

(2) an assessment would be issued to disallow input tax covering the earlier periods 05/11, 11/11 and 02/12, totalling £17,410.89.

11. The Appellant’s representative replied, advising that the Appellant’s business was that of a property consultant making a taxable supply of services, and that he would have been required to be VAT registered compulsorily once the VAT registration threshold was exceeded. Prior to the application for VAT registration he had not received any property consultancy fees or rendered any invoices for the supply of his services, but the claim made by the Appellant at the date of the registration application was over the VAT registration threshold and therefore required the Appellant to register for VAT. In their view, the VAT input on the legal fees incurred in pursuing the claim was therefore properly claimable as input tax.

12. HMRC responded that the Appellant could not reclaim input tax for supplies performed when the Appellant was not VAT registered. The EDR was 1 March 2011, and the court proceedings did not relate to the Appellant’s business activity. In consequence the 08/12 return would be adjusted from a repayment of £16,979.50 to a repayment of £8,162.00 and a Notice of Assessment would be issued to recover input tax reclaimed in earlier periods 05/11, 11/11, 02/12.

13. The Appellant’s representative responded that when the Appellant made the decision to commence legal action the amount of the claim was such that he would be over the registration threshold. It was a speculative project for which the consideration could not be known in advance and would only become apparent when the project came to fruition and on the assumption that the other party would accept the claim. They maintained that the costs were incurred after the date of the EDR when the entitlement came to fruition and would have been subject to VAT as it would be after the date of VAT registration. At the time the demand was made, the turnover threshold would have been reached but not the tax point, and therefore registration would have been necessary.

14. HMRC advised that for VAT to be input tax, the supply had to be made to a taxable person at the time the onward supply was made. The Appellant was not registered for VAT at the time of the disputed introduction of MLCL to the St Pancras project. Even if there was a supply made by the Appellant at the time, he was not a taxable person. No formal invoice had been issued.

15. The Appellant's representative argued that if registration had taken place at that time and a formal VAT invoice was issued with VAT, their client could claim bad debt relief on the basis that the payment had not been received, or issue a credit note to cancel the original supply.

16. On conclusion of the review on 26 February 2014, HMRC upheld its decision.

The legislation

17. The relevant legislation in VATA 1994 is as follows:

Section 3 states:

- (1) A person is a taxable person for the purposes of this Act while he is, or is required to be, registered under this Act.
- (2) [Schedules 1 to 3A] shall have effect with respect to registration.

Section 4 states:

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

Section 5 states:

- (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 provision made by that Schedule and to Treasury orders under subsections (3) to (6) below—
- (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 is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.

Section 24 states:

- (1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say—
- (a) VAT on the supply to him of any goods or services;

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

Section 25 states:

(1) A taxable person shall—

- 5 (a) in respect of supplies made by him, and
(b) in respect of the acquisition by him from other member States of any goods,

10 account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

15 (2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

20 (3) If either no output tax is due at the end of the period, or the amount of the credit exceeds that of the output tax then, subject to subsections (4) and (5) below, the amount of the credit or, as the case may be, the amount of the excess shall be paid to the taxable person by the Commissioners; and an amount which is due under this subsection is referred to in this Act as a "VAT credit".

Section 26 states:

25 (1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

30 (2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

- (a) taxable supplies;
(b) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom;

Schedule 1 states:

35 Liability to be Registered

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—

40 (a) at the end of any month, if [the person is UK-established and] the value of his taxable supplies in the period of one year then ending has exceeded [£81,000]; or

(b) at any time, if [the person is UK-established and] there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days then beginning will exceed [£81,000].

Notification of Liability and Registration

5. (1) A person who becomes liable to be registered by virtue of paragraph 1(1)(a) above shall notify the Commissioners of the liability within 30 days of the end of the relevant month.

5 (2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the end of the month following the relevant month or from such earlier date as may be agreed between them and him.

10 (3) In this paragraph "the relevant month", in relation to a person who becomes liable to be registered by virtue of paragraph 1(1)(a) above, means the month at the end of which he becomes liable to be so registered.

Entitlement to be Registered

15 9. Where a person who is not liable to be registered under this Act and is not already so registered satisfies the Commissioners that he—

(a) makes taxable supplies; or

(b) is carrying on a business and intends to make such supplies in the course or furtherance of that business,

20 they shall, if he so requests, register him with effect from the day on which the

request is made or from such earlier date as may be agreed between them and him.

The Appellant's contentions

25 18. The Appellant's stated grounds of appeal as contained in his Notice of Appeal dated 27 March 2014 are:

30 'The input VAT claimed relates to legal fees incurred in pursuing (sic) claim for introductory services in a property transaction which if it had been successful would have been subject to VAT as the tax point would have arisen when the relevant invoice is issued or earlier receipt of the monies as the business of Property Consultant was VAT registered'.

HMRC's submissions

19. The Appellant has not demonstrated that he, as an individual, was providing services that would have been within the scope of VAT, for a consideration.

35 20. The Appellant has not demonstrated that there is a sufficient link between the service he provided to MLCL and any payment he expected to receive.

40 21. Sections 24, 25 and 26 of the Act are relevant to determine the appeal. It is unambiguous that entitlement to recover as input tax, VAT incurred on supplies of goods and services only exists where the goods or services are supplied in the course or furtherance of his business.

22. At the time the Appellant would have been due any payment from MLCL, he was not registered for VAT. Accordingly the costs, to the extent that they do not relate to an economic activity undertaken by the Appellant within the scope of tax, have no direct and immediate link to a taxable supply and are thus not recoverable. In any event by the time the Appellant was registered for VAT any receipts as a result of the claim would have represented damages and therefore would not have been taxable.

Conclusion

23. VAT may only be recovered to the extent that it can be treated as input tax - VAT does not automatically become input tax simply because it has been incurred by a VAT registered person.

24. Input tax in relation to a taxable person is defined at s 24(1) of the VAT Act 1994. For VAT incurred by a taxable person to be input tax, it must relate to an onward supply by that taxable person in the furtherance of their business.

25. The onward supply by the Appellant was that of introductory services, which took place in 1996. There was no subsequent supply made by him to MLCL in relation to the project. Whilst the legal fees were supplied to him at a time when the Appellant's VAT registration was effective, they were incurred in his attempt to enforce an agreement, which he alleged took place, granting him further payment for the supply of introductory services. Therefore, the supply by the Appellant was made at a time when the VAT registration was not effective and as such fails to constitute input tax.

26. We therefore agree HMRC's decision to disallow credit for input tax in the sum of £8,817.83 claimed in the period 1 June 2012 to 31 August 2012, and to disallow input tax in the sum of £17,410 claimed in VAT periods 05/11, 11/11 and 02/12.

27. For the above reasons the Tribunal dismisses the appeal.

28. 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.

**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 19 March 2015