HMRC - VATSC42200 - Legal Background To Hotel Reservation Charges

There are two cases to take into account when considering the VAT treatment of hotel charges. These are the High Court decision in the case of Bass plc (1993)STC 42 and the decision of the ECJ in the case of Société thermale d’Eugénie-ies-Bains.(C-277/05)

Bass plc

Ordinarily a hotel would undertake to reserve a room for a guest up to 6pm on the day of arrival. After this the booking would lapse. Alternatively the guest could opt for a “guaranteed room” which would be held for their use until 1.00pm on the following day. As a result the hotel was obliged to retain an empty room and had no discretion to re-let until the guarantee period had elapsed.

The customer could arrive at anytime up to 1.00p.m. on the day after their intended arrival and make use of the room. For their part the customer undertook to pay for the room whether they used it or not. The Court held that in these circumstances the hotel was providing a service in making a room available to the guest and that the payment was the consideration for that service.

Société thermale d’Eugénie-les-Bains

In this case the ECJ considered deposits paid to secure hotel reservations which were retained when the guest contacted the hotel to state that they were not taking up the booking. The ECJ considered that the deposits were intended to mark the conclusion of a contract, to encourage the fulfilment of that contract and to provide fixed compensation for the hotel should the contract not be fulfilled as agreed. On this basis it was held that the retained deposit should not attract VAT as the hotel was not making a supply of any identifiable service to the customer.

The decision in Société Thermale d’Eugénie-Les-Bains does not overrule Bass plc. Each is concerned with a distinct arrangement between the hotel and its customers and it is the subtle variations in the arrangements that led to the differing VAT treatments. Therefore, when considering the VAT treatment of hotel charges, it is important to consider the precise terms of the contract. However it is correct to say that the ECJ is a higher court and so the High Court decision in Bass plc should be considered in the light of the ECJ decision.

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