HMRC - VATSC49300 - Consideration: Salary Sacrifice Cases

The policy that salary sacrifices do not constitute consideration for the provision of the benefits is supported by the Tribunal decisions in the cases of RW & MJ Goodfellow [1986] (VTD 2107) and Co-operative Insurance Society [1992] (VTD7109).

Goodfellow

In Goodfellow the appellants ran a hotel. Staff given board in the hotel were paid less than staff that lived out. The Tribunal agreed with the appellants that the reduction in wages of the live-in staff did not represent consideration for their accommodation in the hotel. Orders under the Wages Council Act 1979 set out a minimum wage for hotel staff but permitted employers to reduce that amount where staff lived in. In the appellants’ case, the wages of live-in staff were not adjusted if they did not use the appellant’s facilities as originally agreed. Only renegotiation of employment terms would alter the position.

The Tribunal found that the appellants were doing no more than applying the national wage criteria to their respective staff and tailoring remuneration to the particular working circumstances of individual employees. There was no question of the live-in staff paying for board out of their wages. There was no relevance in the fact that staff in similar jobs received more because they chose to live elsewhere.

Cooperative Insurance

In Co-operative Insurance the appellant ran a car scheme under which staff could opt to have, for periods of three or four years, use of cars owned by the appellant and licensed, etc at his expense. Agreements staff signed on joining the scheme amended the terms and conditions of their contracts of employment and set out the amount by which their salaries would be reduced. The reduced salary applied even if staff ceased to be able to use the cars (for example after being disqualified).

The Tribunal referred to the Goodfellow case and found that, under these arrangements, the employees did not pay any consideration for use of the cars. The relevant staff had effectively entered new contracts of employment under which the car provision became part of their remuneration. The only contract to be considered was the one existing at the time and no cognisance should be taken of earlier ones. The fact staff could have obtained a higher salary by entering into, or remaining subject to, a different contract was immaterial.

Where benefits are provided to staff in circumstances on all fours with those in the above cases there is no consideration for the benefits for VAT purposes. However, where staff purchase the items at the end of the schemes the consideration given for the supply of the goods at that point will be taxable (subject to any special rules affecting particular goods such as cars).

Previous page

Next page