HMRC - VATSC56200 - Consideration - Surrender Of Group Relief: Wording Of A Memorandum Agreed With The Accountancy Bodies

Memorandum issued in June 1979 on behalf of the Councils of the constituent members of the Consultative Committee of Accountancy Bodies, namely:

The Institute of Chartered Accountants in England and Wales

The Institute of Chartered Accountants of Scotland

The Institute of Chartered Accountants in Ireland

The Association of Certified Accountants

The Institute of Cost and Management Accountants

The Chartered Institute of Public Finance and Accountancy,

in connection with VAT on management services for group relief following the case of Customs and Excise v Tilling Management Services Limited. (see VATSC56000)

The accountancy bodies have raised with the Customs and Excise Authorities their disquiet as to the VAT position arising in respect of group relief under section 258 of the Income and Corporation Taxes Act 1970 following the case of Customs and Excise v Tilling Management Services Limited (High Court of Justice, Queen’s Bench Division, 7 July 1978 - reported in “Taxation” 23/30 December 1978).

Tilling Management Services Limited (“TMS”) entered into an agreement with its parent company to supply management services to the group in consideration for the procuring of payments to TMS for the group relief which it surrendered.

TMS was assessed to VAT on the basis that it had supplied services for its parent and other group companies. Customs and Excise contended that the management services were rendered in consideration for the procuring of payments to TMS for the surrender of group relief the quantum of which was the amount of those payments.

TMS appealed to a VAT Tribunal which found in favour of TMS. On appeal by Customs and Excise to the High Court the Tribunal decision was reversed, it being held that there was consideration for the management services.

The Customs Authorities have now confirmed that it remains their view that group relief payments do not give rise to taxable supplies of goods or services for VAT purposes. Where an agreement between two companies links, as is intended by section 258, the surrender of a tax loss to a group relief payment it is not considered that this occurrence of itself results in a VAT charge. Similarly if a tax loss is surrendered but no group relief payment is made, the Customs Authorities would again see no supply for VAT purposes if this is all that happens.

However, when considering whether or not an activity constitutes a supply of services for VAT purposes the Customs Authorities have to determine whether there is any consideration, either monetary or non-monetary, for the activity, and then place a value on the consideration. Thus, if Company A agrees to provide, for example, management services to Company B it is necessary to consider whether there is any consideration for those services.

In some cases, however, an agreement to render management services might be related to some other occurrence. For example, Company A might agree to provide management services to Company B if Company B agrees to procure a payment of group relief for Company A. In such a case Company A has agreed to perform certain services in return for a non monetary consideration - the consideration being Company B’s promise to procure a group relief payment - and it is therefore necessary to value the consideration in order to determine the amount of VAT due. This was the position in the Tilling case, and it was agreed that the value of the management services being provided was the amount of the group relief payments which were made. The group relief payments as such were not taxable but they represented the consideration for a supply of management services.

Dealing with four specific examples put to the Customs Authorities:

If Company A incurs a tax loss and surrenders it to Company B under section 258 without any payment the Customs Authorities do not see any taxable supply of goods or services for VAT purposes.

If Company A incurs a tax loss and surrenders it to Company B under section 258 with a payment or credit to current account for the surrender of the tax loss, again the Customs Authorities do not see any taxable supply of goods or services.

It is possible in cases (a) and (b) above, that Company A might render management services to Company B without a separate charge being made for those services. The position here depends on whether there is any arrangement linking the provision of management services to, say, the procurement or making of group relief payments. If there is, then the Customs Authorities would see a non-monetary consideration for the management services which would have to be valued to determine the amount of VAT due. If there is no such arrangement, then if the management services are provided free of charge there is no taxable supply.

Again, Company A may render management services to Company B and make a charge for those services, at the same time surrendering group relief, with or without payment. In such a case there is clearly a taxable supply of management services, but what has to be determined is whether the money charge is the full consideration for the supply. If there is an arrangement linking the supply of management services to the procurement or making of group relief payments then once again there would be a non-monetary consideration which would have to be valued. In such circumstances VAT would be due on the full consideration, ie on the sum of the monetary and non-monetary considerations. However, if there is no link between the management services and the group relief payments, then VAT will be due only on the charge actually made for the management services.

The Customs Authorities have also confirmed that where services are rendered between companies within the same VAT group registration then no liability to VAT arises.

Whilst, therefore, there are circumstances when VAT might arise the Customs Authorities stress that the mere surrender of group relief, whether in return for a payment or without charge, under the provisions of section 258 does not, in their view, give rise to a supply for VAT purposes and is, therefore, outside the scope of the tax. Moreover, it is not the intention of the Customs Authorities to bring transfers of group relief, as such, within the scope of the tax.

Previous page