HMRC - VATSC91000 - Points Of Policy Arising From The Decision

The comments of Lord Millet in the Redrow case (see VATSC90400), may be taken to suggest the crucial test in determining who receives the supply is who pays for it. It also suggests that, in situations where there is clearly a supply of goods or services to a third party, the party making the payment receives a separate taxable supply - the right to see goods or services supplied to a third party - for which his payment is the consideration.

Considering the above, the decision could be seen as being of special importance in determining the question of direction of supply and may lead to arguments against present direction of supply understandings in certain areas. However, we believe the correct approach to the decision, and the comments in it, is to focus on the context in which they are given. Redrow concerns the particular situation of a claim to input tax made by a taxable person engaged in the making of taxable supplies only. The supply was obtained for the purposes of the taxable person’s business, and on the facts as found the taxable person did obtain something that could be, and was, incorporated into its economic activities.

Use of the House of Lords decision should be restricted to cases that are very similar to the particular circumstances of Redrow. It is important that it is not applied out of such a context. It is also important that pieces of the decision, for example Lord Millett’s comments, are not applied out of this context and used to argue direction of supply in wholly different circumstances. This is HMRC’s policy and officers should apply it accordingly.

The decision is not seen to support a culture of ‘he who pays deducts’. For example, it is not considered relevant to situations where, as part of a larger transaction, one party indemnifies the costs of another. This covers circumstances such as a losing party in a legal dispute paying the legal costs of the winning party or the purchaser of a property agreeing to pay the supplier’s legal and survey costs (see VATSC91400). These clearly do not involve the supplies in question being made to the paying parties, even if the costs relate generally to the taxable business activities of the payers.

Nor would, we believe, any court suggest the paying parties in such circumstances receive a taxable supply of ‘the right to have goods delivered or services rendered to a third party’. In the latter example the costs form part of the value of the exempt (or, if opted, the taxable) supply of the property.

Scope of the effects

Redrow should not be used to justify input tax claims simply because the parties in question paid the fees in the circumstances. Equally, Redrow should not be used to deny input tax deduction by the appropriate party simply because another party paid for the supplies.

Additionally, it is not considered that Redrow affects situations where parties clearly act as agents for others in procuring supplies (see advice on receivers, liquidators etc at VATSC94000).

Redrow is not regarded as damaging in any way the broad principles and precedent applying to input tax deduction. The rules established by such precedent as the ECJ decision in BLP (ECJ case C-4/94) still apply. Tax incurred on the receipt of supplies that are linked to exempt or non-business activities of the taxable person remains non-deductible in principle.

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