HMRC - VATSC93200 - Direction Of Supplies: Viability Studies

Viability studies are normally undertaken when a bank or other financial institution needs to investigate clients, for instance the long-term prospects of a borrower. The studies are usually prepared if either a borrower requires a new loan or extension to an existing loan, or if the borrower has gone into receivership and the bank needs to know whether the company can be saved.

The studies are carried out by a third party appointed by the bank, such as management consultants or accountants. The borrower is often required to pay the cost of the report which can cause difficulty in determining the direction of supply.

Our view is that the supply can only received by the person who contracted the study and this has been confirmed in the Eagle Trust tribunal case. Business Brief 6/95 was issued to clarify the subject and is summarised below.

Eagle Trust

In the tribunal case of Eagle Trust (MAN/93/1125), the Trust requested an increase in its overdraft facility and the bank requested a detailed report on the Trust’s financial position from its accountants. The report was sent to the bank, but the invoices were sent to the Trust for payment.

Customs assessed for input tax incorrectly claimed by the Trust; and the tribunal agreed. It confirmed that since the trust had not contracted for a supply, it could not have received the service even in part.

Business Brief 6/95

Business Brief 6/95 was issued to clarify the different situations that may occur. For supplies prior to 1 May 1995 it was accepted that either the bank or client could recover input tax (as long as only one party did so), but from that date all studies must adhere to the current policy. The five different situations were:

The bank commissions the work and receives the report. The supply of the report is to the bank since it is received for its business purposes and so the bank can recover input tax, subject to the normal rules. This applies even if the company being investigated has to pay for the report and receives copies of it.

The company commissions the report and receives a copy. The supply is to the company since it is using the report for its business purposes and so can recover the input tax, subject to the normal rules. This applies even if there is an acknowledgement of a separate duty of care to the bank by the accountant.

The bank receives one report and the company another, for instance where the bank requires a confidential security review as part of the investigation. The accountant may receive instructions only from the company, or separate instructions from both the company and the bank. In either case, the accountant makes two separate supplies - one to the bank and one to the company - and so should issue two separate invoices. Each supply is received for the purposes of the separate businesses and so input tax can be recovered, subject to the normal rules.

If the company and bank issue joint instructions and both receive the same report, the accountant’s supply is mad equally to both. The accountant should issue two invoices, each for 50% of the cost, and both parties can recover input tax, subject to the normal rules.

Where the company commissions the study but does not receive any report, the accountant’s supply is made to the company, but it is not used for the purpose of its business. Therefore, neither the bank nor the company can recover input tax.

Previous page

Next page