HMRC - VATSC96900 - The Harpur Case

The VAT Tribunal has considered the supply position of fuel cards in a case called Harpur Group Ltd (LON/92/1779A).

Harpur

In Harpur the Tribunal had to decide whether

the appellant bought fuel and other motor-related goods and services from garages that it then sold to its cardholders, or if

iit operated a credit card service.

The tribunal considered five schemes. In its decision the Tribunal found that ownership in the fuel passes at the pump. The Tribunal chairman’s decision in respect of the two “standard” schemes rested crucially on her view that, unless the cardholder indicated before the supply commenced that it was to be made against a Harpur contract, property in the goods passed direct to the only other known party to the supply - the cardholder. Subsequent production of the card could not alter this legal position and its use then simply was to discharge the holder’s obligation to pay for the fuel. In reaching this judgement, the Chairman made it clear that it was based, not on UK or EU VAT legislation, but on English law relating to the time that property passes.

Although the “Bunkerfuel/Pre-purchase” schemes differed in detail, a common factor was that stock owned by Harpur was mixed with the merchant’s stock. On the basis that, in common law, when stock is mixed both parties are co-owners as tenants in common, the Tribunal decided that the agreements provided for the appropriation of Harpur’s stock. This was then a supply from Harpur to the cardholder direct. In the final scheme, “OFIS”, the supplies were not of fuel but of other goods and services such as repairs, tyres etc. The Tribunal decided that the contractual arrangements succeeded in directing the supply via Harpur to the cardholders. Crucially, the arrangements in this case required the cardholder to produce the OFIS card before the supply commenced.

Effect

Where the arrangements succeed in creating a supply via the card company this means that:

Companies who operate large fleets of vehicles can receive a single monthly itemised VAT invoice from the fuel card companies. This invoice provides details of all the fuel and other motor related purchases that their employees have made. This reduces the administrative burden of ensuring that employees render all their receipts to the company’s accounting section. Additionally, the card companies may also provide ancillary management information to their cardholders. The type of information supplied includes servicing data, mileage of the cars etc. Crucially, in order to issue a valid VAT invoice, the fuel card company must have sold the fuel to the cardholders.

If the fuel card company was not supplying goods to the cardholders, it would be seen as operating a credit card service, which would be an exempt financial service. By selling the fuel to its cardholders, the fuel card company is then fully taxable and avoids partial exemption problems.

Bunkerfuel/Pre-purchase type schemes are not common and most of the fuel card companies operate OFIS type schemes and others similar to the two revised Harpur standard schemes. In the light of Harpur, which was taken as a test case for the entire industry, we have agreed that the fuel card companies may alter their standard arrangements to follow the lines sanctioned by the Tribunal. Most, perhaps all of them, have now taken the opportunity to amend their contracts and arrangements accordingly.

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