



Supplies of temporary workers – determining the consideration for VAT purposes

Reed Employment Ltd [2011] UKFTT 200 (TC)

Reed Employment Ltd carried on a recruitment business, consisting in part of providing temporary workers to clients. Clients paid Reed an hourly charge for the temporary workers; this charge was not split between the cost of the temp's service (which was paid on by Reed to the temp after certain statutory deductions) and Reed's commission. There was no contract between temp and client.

One of the issues in the appeal related to the valuation of Reed's supplies for VAT purposes. Reed argued that its supplies consisted of the introduction of workers to its clients and that the consideration for this was the commission which it charged in return for that service (excluding the amounts paid on to or on behalf of the temporary workers). HMRC contended that Reed was making a supply of temporary staff as principal and the consideration for that supply was the whole amount charged to the client.

The decision of the First-tier Tribunal

The First-tier Tribunal decided that Reed was making a supply of introduction services rather than supplying temporary staff. The critical element was the degree of control over the worker by Reed. A supply of staff involved the supplier passing control of the worker to the client. A supply of introduction services meant the supplier never had control of the worker, which went to the client from the outset. Given that the Tribunal held that Reed had no control of the temporary workers before their assignment started, it found that the temp was supplying his services direct to the client. As a result, the supply made by Reed could not be a supply of staff.

On examining the contractual framework, the Tribunal emphasised that temporary workers were not obliged to accept any offer of work or obey Reed's instructions, but having turned up and accepted work, owed Reed an obligation to obey the client's reasonable instructions. Reed therefore never acquired the contractual right to control of the temp and could not be taken to make a supply of such control to the client.

The Tribunal was influenced by the fact that Reed did not bear the economic cost of the temp's services and what Reed paid to the temp was not consideration for any supply by the temp to Reed. The economic reality was that supplies by Reed to its clients in respect of temporary workers were supplies of introductory services and ancillary services (such as evaluation of the temp and a payments service) and the consideration for those supplies was the gross commission element of the charge rate.

A Word of Warning

A decision of the First-tier Tribunal is not binding on other courts as it is not a superior court of record. Characteristically HMRC do not accept that the decision of the First-tier Tribunal in Reed has any wider effect than determining the issues between the parties to that litigation (see paragraph 2 of Revenue & Customs Brief 32/11 issued on 24th August 2011). This means they will resist any attempt to rely on it as authority for accounting for VAT only on the commission element of charges to clients. It is notable that HMRC have not appealed (had they done so, and lost, then they would have suffered an adverse decision of a higher court which would have had binding effect).

HMRC's view is that the correct VAT treatment of supplies made by employment bureaux remains as set out by them in VAT Information Note 03/09 which is as follows:

A bureau acting as an agent only has to account for VAT on its commission, and a bureau acting as a principal has to account for VAT on the full amount charged to clients – this includes a temp's wages, PAYE, and NIC.

Ann L. Humphrey

Solicitors
Tax and
Business
Advisers



HMRC consider that a bureau is acting as principal when it contracts with temporary workers (by way of a contract of service or a contract for services) and that a bureau is only acting as agent when it does not pay or make arrangements for paying workers and the workers contract directly with clients.

alh/29.07.12