

Outlays - Have you got the VAT right?

The Background

In a recent Tribunal Case, Brabners LLP Vs HMRC, it ruled in favour of HMRC resulting in a firm of solicitors facing an unpaid VAT liability of almost £70k.

The case centred on how the firm treated disbursements for VAT purposes, HMRC argued that costs incurred by a business in the course of supplying their services are not disbursements (non-vatable) but are instead recharges and will therefore attract output VAT.

The case focused on the service offered by the firm in which they obtained electronic property searches from a search agent. As a result, the fees for those searches could not be treated as disbursements as the result of the searches formed an overall part of the services to its clients as they could provide advice on its findings. In its judgement the Tribunal also went further than HMRC's own guidance in concluding that electronic searches could not be treated as disbursements even where the solicitor had not made any use of the search report to advise the client.

How should I act?

The Brabners case is significant for the legal sector and any other business recharging to its customers. Going forward, solicitors need to review their current treatment of disbursements for VAT purposes to ensure they are fully compliant with the legislation.

This will involve looking at common outlays and determining whether or not they meet the definition of a disbursement. If that is the case, then no output VAT is due. However, if all conditions for a transaction to be treated as a disbursement are not met, VAT may be due on the outlay.

CONDITIONS FOR DISBURSEMENTS

A disbursement is when you act as an agent on behalf of the client and pay suppliers on their behalf. You pay for the supply but it is the client who receives the goods or services and eventually also pays for them .

The conditions for a disbursement are as follows:

- 1.You paid the supplier on your clients behalf and acted as the agent of the client.
- 2.Your client received, used or had the benefit of the goods or services you paid for on their behalf
- 3.It was your client's responsibility to pay for the goods or services, not yours.
- 4.You had permission from the client to make the payment
- 5.The client knew that the goods or services were from another supplier, not from you
- 6.You show the costs separately on your invoice
- 7.You pass on the exact amount of each cost to your client when you invoice them, i.e. no mark-up
- 8.The goods or services you paid for are additional to whatever you're billing your clients for doing yourself.

VAT does **not** have to be charged on a disbursement when billing the client and this is beneficial when the client cannot reclaim the VAT i.e. they are not VAT registered.

Input tax on the supply cannot be claimed by the solicitor as it has not been made to them. The client must be provided with a valid VAT invoice in order to reclaim the Input VAT.

Examples:



Land registry fees



Estate duty



Stamp duty and tax.



Probate fees



Court fees



Incorporation fees

RECHARGES

A recharge is when you pass on incidental costs that your firm incurs itself in the course of supplying goods or services to its clients. It's you and not the client who purchases the goods or services, which are supplied to and used by your business.

A recharge is part of the **overall service** to a client.

VAT will be charged on these costs regardless of whether or not you incurred VAT on them.

It's up to you whether or not these costs are itemised on invoices.

Examples:

- An airline ticket bought to visit a client in England. Note there is no VAT on flights but you must still charge VAT on the recharge to the client.
- Mileage
- Postage
- A bank transfer fee incurred when transferring money from business account to a client's own account (even though the bank fee is exempt for VAT).
- Electronic Search fees (following the Brabners case).

How can we help?

Our tax team can assist in your review of your current VAT Treatment.

Please contact Una McKearney in our tax department or call **028 87752990**



Una McKearney
Manager

Una.McKearney@CavanaghKelly.com