Capping provisions and incorrectly charged VAT

UKFTT 102 Ian Robertson

Whilst this case concerns VAT being claimed under the DIY builder's scheme, it highlights again the risk of a VAT loss where VAT is incorrectly charged. In this case the supplies were construction services which should have been charged at the reduced rate. Instead suppliers charged and accounted for VAT at the standard rate. Because the claim was by an individual under the DIY scheme, by the time the error had come to light the suppliers were too late to adjust for the overpaid VAT. Mr Robertson argued that the refusal to repay the VAT in full was unfair because HMRC had received the output tax, and that the excess VAT should either be refunded to him or to the suppliers, to enable them to pass on the overcharged VAT.

However, the Tribunal cited the Susan Nike Tribunal decision which set out that the then three year cap is clear in law and the Tribunal has no discretion. Whilst the Tribunal sympathised with Mr Robertson's position, HMRC were only entitled to refund VAT properly charged. Accordingly the appeal was dismissed.

Click here to read the case in full.

Comment

This case demonstrates the importance of people taking VAT advice when determining the liability of particular supplies. In this case, all parties would have benefited from reference to VAT Property Solutions.