

FTT procedural – Whether case is standard or complex**JSM Construction**

This is an interesting analysis of what makes a case complex. Where Tribunal cases are categorised as standard, the rules say that, even if the taxpayer wins, it cannot recover its costs from HMRC as both sides will meet their own costs. However, if a case is categorised as complex it can be brought within the costs regime and the winner can seek recovery of its costs.

This case had been classified as standard and the taxpayer wished for it to be re-allocated as complex. There are three criteria for classifying a case as complex. These are that the case:

- (a) will require lengthy or complex evidence or a lengthy hearing;
- (b) involves a complex or important principle or issue; or
- (c) involves a large financial sum.

The case is about input tax recovery and credit notes and is scheduled to last six days. It involves five witness statements and four lever arch files of documentary evidence. The sum at stake is £226,845.

The discussion about whether the underlying dispute involved an important principle merits some attention. JSM had paid Goldflex, a supplier of labour, circa £1.3m in 2009 and 2010 in settlement of various invoices which seemed to meet the conditions to be VAT invoices. Some invoices issued by Goldflex to JSM remained unpaid when Goldflex became insolvent in 2010. The liquidator first pursued JSM for the unpaid invoices, and then when no payment was forthcoming, issued a credit note in respect of all the invoices, including the paid ones, on the grounds no supplies had been made to JSM at all. The credit note was not challenged and there is no suggestion of fraud. HMRC disallowed the VAT claimed on the paid Goldflex invoices. HMRC's primary argument is that the unchallenged issue of a credit note by an insolvency practitioner means that the taxpayer has no entitlement to claim the VAT. HMRC's alternative argument is that it has the power to require JSM to produce alternative evidence of input tax entitlement, after the time of supply, over and above VAT invoices. As JSM only has the invoices, HMRC say the VAT is not JSM's input tax as the charge to VAT is not evidenced and quantified as specified by HMRC.

HMRC's assertions are interesting and we shall look out for the main decision next year. The efficacy of credit notes has of course already been considered by the Court of Appeal in Brunel Motor Co Ltd. That Court concluded that a credit note is merely evidence of an underlying legal

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entitlement to a decrease in consideration and is not sufficient in itself to justify a decrease. The fact that this issue has already been considered by a higher court was a key factor in the FTT deciding this case is not complex. To read the decision [click here](#).

Comment

This case is important because of HMRC's assertions. Its primary case is that the Tribunal cannot reach a conclusion which is contrary to the results of an insolvency procedure, conducted under the relevant legal provisions, that is to say the issue of the credit note, while the alternative case argues that HMRC may impose, after the time of supply additional requirements about the documents that must be held to support a VAT claim, over and above VAT invoices. An earlier FTT (Maliha) has concluded HMRC do not have this power after the time of supply as the right of deduction arises at the time the VAT is chargeable. HMRC did not appeal that decision but of course it is not obliged to do so, and the decision in Maliha is not binding.

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