

Services paid for by insurers and acting as an insurance agent

[Riskstop Consulting Ltd](#)

The FTT has released its decision in Riskstop Consulting Ltd. The decision notes that the taxpayer is also in dispute with HMRC regarding the treatment of site surveys, where a surveyor visits the insured's business, but this dispute concerns two of the taxpayer's other products.

Support service - Where no site visit is performed, Riskstop prepares a questionnaire using its expertise to identify the information necessary to form a view on the insurance risk. On completion by the insured, Riskstop analyses the response and reports back to the insurer.

Assist Service – Historically, where an insurer had stipulated Risk Improvement Requirements, brokers often had the responsibility to ensure compliance. This, for a variety of reasons, was considered unsatisfactory and Riskstop developed a product which involved it liaising directly with the insured to assist the insured in satisfying the Risk Improvement Requirements. The FTT notes that many insurers have adopted this model.

Historically, both of the above services were provided by another company in the same corporate group as Riskstop and HMRC had ruled twice that the services were exempt. However, in 2009, when the taxpayer took over the provision of these supplies, HMRC 're-examined the nature of the services' and concluded that they were standard rated. The taxpayer disagreed, arguing that both of these supplies to the insurers were properly exempt under Item 4 of Group 2 of Schedule 9 of VATA 1994.

The FTT set out the 5 conditions to be met for exemption to apply (see para 68), the first of which is that the supplier must be an insurance agent. All parties agreed that the taxpayer was not an insurance broker. The FTT considered a number of ECJ and domestic decisions including Arthur Andersen (C-472/03), InsuranceWide (CoA – 2010), Royal Bank of Scotland (HC – 2012) and Westinsure (UT – 2014 on appeal to the CoA).

The FTT observed at para 74 that there is no element of Riskstop's activities that involves:

- finding prospects or introducing them to the insurer; or
- putting the insurers in touch with potential insureds for the purpose of concluding insurance contracts, or bringing insurance products to the attention of the potential insureds.

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On the basis that Riskstop played no part in the process of bringing the insurer and insured together the FTT concluded it was not an insurance agent and therefore the appeal was dismissed. The FTT decided not to consider the other conditions for exemption. The impact of HMRC's decision in 2009 that it no longer considered such supplies to be exempt is not detailed, but the commercial implications of having to charge insurers VAT would have encouraged the taxpayer's challenge.

Comment

The decision is based again upon Riskstop not being involved in the bringing together of the parties, which is not a condition explicitly stated in EU law under Article 135(1)(a), since that Article does not define an insurance agent. Whilst it did not assist the taxpayer, the FTT also noted the wider scope of item 4, as highlighted by the Arthur Andersen Judgment, and considered it "unsatisfactory that, a decade after the Andersen decision, the UK domestic legislation still appears to be so far adrift from the CJEU's interpretation of art 135." This means that supplies which are not exempt under EU law following Andersen, are still exempt under UK law because the UK's insurance exemption is wider.

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