[2016] UKFTT 24 (TC)

TC04833

Appeal number: TC/2013/07963

VAT – Single or multiple supply –operation of TOMS – held – TOMS could be operated – appeal allowed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

TRAVEL INCENTIVES MEETINGS EXHIBITIONS LTD **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE SARAH ALLATT
MR MARK BUFFERY FCA, AIIT

Sitting in public at Royal Courts of Justice on 8 June 2015 and after receiving representations as directed from the appellant on 27 August 2015 and the respondents on 9 September 2015

The Appellant did not appear and was not represented

Mr Les Bingham, Officer of HMRC, for the Respondents

DECISION

1. The appellant did not appear and was not represented at the hearing. The Tribunal received a letter on 3 June 2015 stating that the appellant had gone into liquidation and neither witnesses nor representatives would appear at the hearing the following week. The letter made it clear that the appeal was not withdrawn. We therefore considered it was both the wish of the appellant and in the interests of justice that the appeal should proceed.

2. Nevertheless, as the burden of proof was on the appellant, and no witnesses appeared for the appellant nor were they able to cross-examine the evidence of HMRC, this did hamper the appeal and meant that several facts remain unknown.

3. Travel Incentives Meetings Exhibitions Limited (TIME) appealed 3 assessments for VAT of £408,729, £87,960 and £170,792. These assessments cover the period 2011 – 2013.

4. There were 3 grounds of appeal. Firstly, that the assessment was raised out of time, secondly that the supply should be treated as a mixed supply and not a single supply, and thirdly that there is an inconsistency between the treatment of the supply made by TIME and the onward supply made by their customers.

Background

5. The Appellant had been trading and registered for VAT since 1982. We describe one of its businesses, without prejudice to the decision below, as the arranging of conferences for other businesses. Its customers then sold on the conferences to the end users.

6. VAT rules in this area changed in 2011. After this point, the wholesale supply of conference packages became subject to the 'business to business' general rule, and were therefore liable to VAT at the standard rate, with the place of supply being where the customer was based.

7. HMRC believes that TIME's customers operate, or should operate, the Tour Operators Margin Scheme, which would disallow the input VAT on conference services.

8. As a result of this change in legislation, therefore, a large amount of irrecoverable VAT is created by the operation of business in this way (using a middleman, here TIME), compared to the direct sourcing of the elements of the conference by the TOMS business.

First Ground of Appeal

9. The first ground of appeal was that the assessment was made out of time. The law in this area is contained in VATA 1994.

> ‘An assessment .....of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following—
>
> (a)..... or
>
> (b)one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,
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> but (subject to that section) where further such evidence comes to the Commissioners’ knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment.’

10. TIME believed that the ‘evidence of facts, sufficient....to justify’ was provided at a meeting on 14 May 2012. They therefore contend that the making of the assessment in August 2013 was out of time.

11. HMRC contend that the evidence was not fully provided until the return visit of 26 November 2012, or possibly an exchange of letters ending in September 2012.

12. This is one of the many areas where the non-appearance of the appellant, understandable though it is, hampered the Tribunal. We had the statement of case for the Appellant, which was put to HMRC. We heard from Emma Jones, the HMRC who had carried out the visits. However we were not able to hear from the appellant directly, nor was Ms Jones able to be cross examined by the appellant.

13. We heard from Emma Jones who appeared a competent and credible witness. She explained that at the meeting in May 2012 she had realised very quickly that VAT was not being charged on any overseas travel. However at that time it was not clear to her the exact nature of the supplies being made. She left the meeting in May with a list of sales invoices, various details from the computer system of the company and she left the company accountant with a handwritten list of queries.

14. There is disagreement between TIME and HMRC about a number of specific points relating to this visit and subsequent interactions. Examples of these disagreements are when the VAT Notice 741A regarding place of supply was handed over by HMRC and discussed, when a list of overseas conferences was provided, and when it was indicated that a check on the onward supply chain needed to be made.

15. As a result of these disagreements and the non-appearance of the appellant, we are unable to make many findings of fact in this area.

16. The burden of proof is on the appellant that sufficient facts were provided (in this case in May 2012) to justify the making of the assessment.

17. We find that such evidence was not fully provided in May 2012. We refer to a letter written by the company accountant in September 2012 stating ‘regarding the

issue regarding place of supply I agree with your suggestion that we need to discuss this at our client's office as the members of staff involved....can give you a more detailed description.'

18. Ms Jones's notes of the meeting in November 2012 show a detailed discussion of the place of supply and the exact nature of the services provided by TIME when they organise a conference. We consider this evidence was needed before an assessment could be made.

19. We therefore find that the assessment was made within the time allowed.

Second Ground of Appeal

20. The second ground of appeal concerns whether the supply is a single supply of conference services or separate supplies of travel services and conference services.

21. Here again there are considerable differences between the position taken by the appellant and that taken by HMRC, which turn on the facts and were not able to be fully tested in the appeal hearing. Once again as the burden of proof is on the appellant this hampered their case.

22. The appellant contends that there are 2 supplies, one of travel services and one of conference arranging services. They set out the balance of costs (and hence the likely value of onward supplies) as 90% travel services and 10% conference arranging. They contend that the overseas travel services are outside the scope of VAT.

23. HMRC contends there is one supply of conference services, chargeable to VAT, with the place of supply where the customer is based.

24. The points raised in the appellant's notice of appeal were put to HMRC for their response.

25. The points made by the appellant in relation to the second ground of appeal were:

(1) That the clients in question have been clients since before 2000. There are no contracts between them and TIME, the relationship is based on mutual trust and experience. Therefore HMRC should not seek to look for the terms of the contract, and in particular should not take the website, which post-dated starts of all the relationships, as indicative of how business is done with these long standing clients.

(2) There are 3 distinct costs incurred and services supplied – travel (at cost) conference facilities (at cost) and an additional fee for managing travel and arranging the conference (the profit element).

(3) It is possible for delegates to choose some elements of the service but not all. For example some would make their own travel arrangements, and some

would bring family members for whom travel would be purchased but not conference facilities.

(4) There appears to be some disagreement between different VAT offices as to the nature of the supply. The local VAT offices of the customers of TIME appear to be proposing to treat the supply as travel services and not conference services.

(5) The cost of the supply is 90% travel, 10% conference organising. It is therefore illogical to determine that a single supply should be that of conference organising and not travel.

(6) There are some errors in the group registration and the registration date stated by HMRC.

(7) There are addition errors made when calculating the assessment

(8) HMRC have been dilatory in complying with Tribunal directions.

26. HMRC responded to the appellants points. Once there were disagreements between the sides which we had no opportunity to try to explore, due to the lack of cross-examination.

27. HMRC responded as follows:

(1) HMRC believes that what is shown on the website is representative of how the appellant conducts business with the customers in question. This was backed up by what they had been told by the appellant's accountant during the meeting on 26th November. The Tribunal was shown extracts of the website, and also a brochure for a conference organised for one of the customers. These showed that TIME was the conference organiser and the point of contact for both routine and emergency enquiries.

(2) We were shown several invoices to demonstrate how TIME sold services to its customers. These did not appear to back up the statement by TIME in 25 (2) above. It was instead apparent that TIME invoiced firstly deposit payments (with no breakdown) and then finally a reconciliation invoice that broke down costs into a delegate charge and then extra charges, either for room or travel supplements, or expenses incurred by TIME during the conference itself. HMRC stated TIME's accountant had confirmed, in contrast to their statement above, that the client would not be aware of the amount of the charge that was 'profit' (and therefore could not, therefore, be invoiced at cost for travel and conference facilities, and then an additional management charge). This would appear to be consistent with normal commercial practices.

(3) HMRC explained that they were aware of these facts and had indeed excluded from the assessment items where individuals had been paying supplements, for example for family members to travel. These had been treated as supplies made under the Tour Operators Margin Scheme and were therefore not the subject of this appeal. Nevertheless they reiterated that the basic method of charging would appear to be on a delegate basis (i.e. a basic fee for conference attendance), with additional supplements if required.

(4) HMRC stated that no other office had issued a ruling contrary to their decision in this case.

5) HMRC disagree with this for 2 reasons. Firstly they point out that although the costs of the business may be 90% travel, they believe some of these costs relate to the costs of travel for TIME's own employees, rather than the cost of travel that it incurs for the eventual customer. The travel costs of TIME employees should be properly costs of the 'conference organising' rather than travel. Secondly they continue to argue that when looked at from a customer point of view, it is a 'whole package conference' that is being bought, rather than individual items.

6) HMRC concede typing errors and a mistake were made in their stating of the VAT group and registration date. This has no bearing on the salient points of the case.

7) HMRC explained that it was not an error of addition that had been made, rather it was a duplicate VAT charge that had been made by TIME in error when issuing VAT only invoices to its customers. HMRC explained that a credit note should be issued for this and then the subsequent VAT return would be able to claim a credit of £116,837.81.

8) HMRC made no significant comment on this.

28. We were in addition provided with witness statements from Paul Gawman, Ray Haynes and Philip Jenkins. The statements from Mr Gawman and Mr Jenkins were general in nature and did not add any specifics to the points made above. Mr Haynes witness statement was specific but primarily identical to the statement of case for the appellant, which also made additional points, and therefore we have not referred to his witness statement separately.

The Law

29. The primary law in this area is set out in the decision of the ECJ in Card Protection Plan (C-349-96). The European Court sets out what to consider when deciding whether a supply is a single supply or two or more supplies that should be assessed separately.

> ....every supply of a service must normally be regarded as distinct and independent and, second, that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service.
>
> There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the

> tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (Joined Cases C-308/96 and C-94/97*Commissioners of Customs and Excise* v *Madgett and Baldwin* [1998] ECR I-0000,paragraph 24).
>
> In those circumstances, the fact that a single price is charged is not decisive. Admittedly, if the service provided to customers consists of several elements for a single price, the single price may suggest that there is a single service. However, notwithstanding the single price, if circumstances such as those described in paragraphs 7 to 10 above indicated that the customers intended to purchase two distinct services, namely an insurance supply and a card registration service, then it would be necessary to identify the part of the single price which related to the insurance supply, which would remain exempt in any event. The simplest possible method of calculation or assessment should be used for this (see, to that effect, *Madgett and Baldwin*, paragraphs 45 and 46).

30. Applying the principles laid down by the ECJ we find that a single supply of conference services is made.

31. We find that the 'essential features of the transaction' are that a conference is being organised, and businesses are paying for delegates to attend that conference. We find that the split of the costs incurred by the supplier is not, by itself, a reason to find that the principal cost has to be the principal supply, or cannot be an ancillary service. We find that the travel is ancillary as 'it is not an aim in itself, but a better means of enjoying the principal service supplied'. Hence we believe that all supplies to which this assessment relates were supplies of conference services. The fact that other, separate, services of travel could be (and sometimes were) supplied, for example to accompanying spouses, did not mean that the services (which included travel) supplied to the wholesale customers of TIME were separate travel supplies. The conference was the entire reason these customers of TIME used their services, and the travel was a necessary ancillary service to that.

32. We find in relation to the duplicate invoice referred to in paragraph 27 (7) above that as it has been duly issued, the proper procedure is to issue a credit note. We believe HMRC have been specific in their advice to TIME about how to do this. We do however urge all parties involved (which now includes the administrators) to clear up this administrative matter as soon as possible.

Third Ground of Appeal

33. The third ground of appeal is that there is an inconsistency in the way that HMRC treat the supplies made by TIME, and the supplies made by the customers of TIME, when they essentially are supplying the same thing.

34. Were the Appellant to be able to operate the Tour Operators Management Scheme to its customers, as they do to their onward customers the element of irrecoverable VAT in the chain of the transactions would be minimised.

35. TIME believe that their customers are making the same supply as they are. Therefore the Tour Operators Margin scheme should either apply to both TIME and its customers, nor neither.

36. HMRC explained that the difference here is that TIME's customers are supplying to the 'end user' which may be a business or an individual, whereas TIME is supplying to another business who is not the end user. This therefore means that supplies made by TIME's customers fall within the Tour Operators Margin Scheme, whereas supplies made by TIME do not.

37. This has the knock on effect, since the change of rules in 2011, of meaning that TIME's customers charge VAT to their customers only on their profit margin, and their input VAT is irrecoverable. As implemented and interpreted by HMRC, the effects of the changes to the place of supply rules from 2011 therefore had the result of creating substantial amounts of irrecoverable VAT, in respect of services that were either zero rated or both provided and consumed entirely outside the UK. While HMRC required that TIME's customers should apply TOMS, with VAT only charged on the margins charged to their delegates, they also ruled that TIME could not apply TOMS to the services supplied to its own customers. This then had the effects that this artificially created VAT would also be irrecoverable by the recipients, since they were obliged to apply TOMS to their onwards supplies.

38. HMRC pointed out that TIME may be able, by registering for VAT in other countries, to reclaim some input VAT that it suffers.

39. HMRC are aware of the problems that the change in legislation is causing the industry. While accepting that this caused commercial difficulties for businesses such as TIME, instead of considering methods of assisting such businesses adapting to the new regime, simply assessed for the additional tax.

The Law

40. The law in this area appears to be principally contained in an ECJ Case EC Commission v Spain (Case C-189/11) [2013] BVC 471. This judgement was handed down in this case in September 2013, at a time when HMRC had started but not finished their investigations into the situation outlined in this case.

'Findings of the Court

47 For the purposes of assessing the first head of claim, it must be determined whether, by authorising travel agents to apply the special scheme at issue to transactions which they carry out not only with 'travellers' but also with any type of 'customer', the Kingdom of Spain transposed Articles 306 to 310 of the VAT Directive correctly.

48 The Spanish language versions of Articles 306 to 310, first, and of Article 26(1) to (4) of the Sixth Directive, secondly, systematically use the term 'traveller'. By contrast, the other language versions of those two directives use the terms 'traveller' and/or 'customer', sometimes changing their use from one provision to another.

49 Despite those very substantial divergences, the Commission claims that a literal interpretation, based on five of the original six language versions of the Sixth Directive, which systematically use the term 'traveller', is possible, since the use of the term 'customer' in the English language version of that directive is a mistake.

50 The fact that only the English language version used the term 'customer', furthermore on only one occasion, might suggest that it was a mistake. The explanations provided by the Commission at the hearing, according to which the working document which was the basis of the Sixth Directive was drafted in French, could also support the idea that a mistake was made when that directive was translated into English.

51 However, several factors cast doubt on the Commission's analysis.

52 First of all, it must be noted that, if it was a mistake, it was not corrected in the English language version of the Sixth Directive.

53 Next, far from appearing only once and being confined to one language version in particular, the term 'customer' was used in numerous other language versions of the Sixth Directive and was not used only in Article 26(1).

54 Moreover, although that alleged mistake could have been corrected at least when the VAT Directive was adopted, that did not happen, since the term 'customer' appears also in numerous language versions of Articles 306 to 310 of that directive, not always systematically.

55 Finally, the proposal for a directive referred to in paragraph 42 above, which aimed to replace the existing legislation by a text adopting, in essence, the customer-based approach, used the term 'traveller' in the French language version of Article 26(1) of that directive, whereas it used the term 'customer' in the English language version of that same provision.

56 It follows that, contrary to what is claimed by the Commission, a purely literal interpretation of the special scheme for travel agents based on the text of one or more language versions, to the exclusion of the others, cannot prevail. In accordance with established case-law, it must be held that the provisions of European Union law must be uniformly interpreted and applied in the light of the versions in all the languages of the European Union. Where there is divergence between the various language versions of a European Union text, the provision in question must be interpreted by reference to the general scheme

and purpose of the rules of which it forms part (Case C-280/04 *Jyske Finans* [2005] ECR I-10683, paragraph 31).

57 In the present case, the other provisions which surround those using the term 'customer', as it is used in the English language version of the Sixth Directive, vary according to the language versions of the two directives in question, so that it is impossible to reach a conclusion concerning the interpretation of the special scheme for travel agents on the basis of the scheme of those provisions.

58 As regards the purpose of the special scheme, the Court has already pointed out on numerous occasions that the services provided by travel agents and tour operators in general consist of multiple services, in particular transport and accommodation, supplied both inside and outside the territory of the Member State in which the undertaking has established its business or has a fixed establishment. The application of the normal rules on place of taxation, taxable amount and deduction of input tax would, by reason of the multiplicity of services and the places in which they are provided, entail practical difficulties for those undertakings of such a nature as to obstruct their operations. It was in order to adapt the applicable rules to the specific nature of that activity that the European Union legislature set up a special VAT scheme in Article 26(2) to (4) of the Sixth Directive (see Case C-163/91 *Van Ginkel* [1992] ECR I-5723, paragraphs 13 to 15; *Madgett and Baldwin*, paragraph 18; Case C-149/01 *First Choice Holidays* [2003] ECR I-6289, paragraphs 23 to 25; Case C-200/04 *ISt* [2005] ECR I-8691, paragraph 21; and Case C-31/10 *Minerva Kulturreisen* [2010] ECR I-12889, paragraphs 17 and 18).

59 The objective of the special scheme is, consequently, to simplify the rules relating to VAT applicable to travel agents. It also seeks a fair distribution of the revenue from the charging of that tax among the Member States, by ensuring, first, the attribution of the VAT revenue relating to each individual service to the Member State in which the final consumption of the service took place and, secondly, the attribution of that relating to the travel agent's margin to the Member State in which the agent is established.

60 It should be pointed out, as is moreover not disputed, that the customer-based approach is the most conducive to achieving those two objectives by permitting travel agents to benefit from simplified rules regardless of the type of customer to whom they provide their services and by encouraging, in that way, a fair distribution of revenue between the Member States.

61 The fact that, when the special scheme for travel agents was adopted in 1977, the majority of those agents sold their services directly to the final consumer does not mean that the legislature intended to limit the special scheme to sales of that kind and to exclude sales to other operators.

62 Where an operator organises a package travel service and sells it to a travel agent who then resells it to a final consumer, it is that first operator who takes on the task of combining several services purchased from various third parties who are subject to VAT. In the light of the objective of the special scheme for travel agents, that operator must be able to benefit from simplified

VAT rules and those rules must not be reserved to travel agents who limit themselves, in such a case, to reselling to the final consumer the package they have purchased from that operator.

63 Moreover, it should be recalled that the Court has already had occasion to interpret the term 'traveller' by giving it a wider meaning than that of final consumer. Thus, in paragraph 28 of *First Choice Holidays*, the Court held that the words 'to be paid by the traveller' in Article 26(2) of the Sixth Directive cannot be interpreted literally as excluding from the taxable amount for VAT part of the 'consideration' obtained from a third party within the meaning of Article 11A(1)(a) of that directive.

64 The other objections raised by the Commission in order to rule out the customer-based approach cannot call that analysis into question.

65 The fact that the special scheme for travel agents is an exception to the normal rules, so that, as such, that exception must not be extended beyond what is necessary to achieve its objective (see *First Choice Holidays*, paragraph 22), does not, however, mean that the traveller-based approach must be adopted, if it compromises the effectiveness of that special scheme.

66 While acknowledging that the special scheme for travel agents is capable of improvement, the Commission, relying on paragraph 28 of *Commission* v *Spain*, submits that it is not for the Member States to adopt on their own initiative an approach which, according to those States, improves that scheme because, by doing so, they take the place of the European Union legislature. However, that judgment cannot properly be relied upon in the present case, since, unlike the special scheme for travel agents, the legislation at issue in that judgment was unequivocal.

67 The argument concerning the alleged inconsistencies which would result from a reading of the term 'customer' as meaning not 'traveller' but any type of 'customer' is valid only with respect to the original English language version of the Sixth Directive and the subsequent language versions, modelled on the latter, which use that term only on one occasion. Concerning the language versions of the VAT Directive which use that term systematically in Articles 306 to 310, that argument is ineffective.

68 With regard to the risk of travel agents applying the special scheme even where they are acting as intermediaries, it suffices to state that, in view of the express terms of the second subparagraph of Article 306(1) of the VAT Directive, which exclude such a possibility in any event, that risk is not established.

69 In the light of the above considerations, Articles 306 to 310 of the VAT Directive must be interpreted by following the customer-based approach.

70 It follows that the Commission's first head of claim must be rejected as unfounded.'

41. The case was not referred to during the hearing. The Tribunal therefore asked for further submissions on this case and received them from the Appellant on 27 August 2015 and HMRC on 8 September 2015.

42. The Appellants agree that the case is material to their circumstances, and that it confirms that businesses that provide overseas travel and conference services should account for VAT on their margins and not on the gross supplies. It also suggests that providers of wholesale supplies such as TIME Ltd should be covered by TOMS.

43. HMRC agree that UK policy has not yet implemented this judgement. We were referred to Revenue and Customs brief 05/14 which mentions this and accepts that it is open to any business to apply the direct effect of the judgement of the European Court should they so wish. We note that the brief was issued in January 2014, and HMRC intended to review this after 1 year, but as yet no new guidance is forthcoming.

44. We are aware that this distinction that HMRC draws between supplies to the end customer and wholesale supplies has led to the business model operated by TIME becoming problematic or unworkable. We are aware that HMRC are aware of this.

45. We find it difficult to understand why HMRC chose to bring this current case (and in doing so, force the business into administration) at a time when it is clear that UK policy around implementing the judgement may need to change, and at a time when similar cases were already going through the European Courts while HMRC were investigating this case.

46. While TIME did raise the ECJ case in their correspondence with HMRC, HMRC dismissed its relevance, and did not mention the case in their submissions or evidence at the hearing. In their subsequent submissions, HMRC advised that they considered the case to be irrelevant, because while TIME did have the option of applying direct effect to the EU law, the use of TOMS must be on an all or nothing basis. TIME would have to use it for ALL supplies of conference services (including those wholly within the UK), or for none of them.

47. The objective of the special scheme, according to the ECJ is "to simplify the rules relating to VAT applicable to travel agents" and "to seek a fair distribution of the revenue from the charging of that tax among the Member States" "

48. It follows that TOMS is not intended to be used as a means of either increasing the tax take or distorting the fiscal neutrality of the VAT system.

49. Considering first the application of TOMS to supplies consumed outside the UK, it becomes clear that using TOMS is the only method of ensuring that irrecoverable VAT is not created on supplies which in essence have nothing to do with the UK, or even the EU.

50. By way of example, one of the disputed invoices related to a convention held in Las Vegas. The total value of the invoice was £323,841. If TOMS had been applied, TIME would have been able to zero rate its margin.

51. Another invoice related to a conference in Vienna. Here, the application of TOMS would have meant that irrecoverable VAT was incurred in Austria, and TIME would only have been required to account for VAT on its margin. Without the application of TOMS, VAT has been assessed on Austrian VAT. Since virtually none of the underlying expenses would have been subject to UK VAT, while this would have increased costs to TIME and potentially reduced its gross margins by one sixth for such a conference taking place within the EU, it would have been entirely consistent with the objective of the VAT system. VAT relating to supplies consumed in Austria would have remained in Austria, and VAT on the value added in the UK would have been charged in the UK.

52. Where TOMS is used for supplies wholly within the UK, it has invariably been limited in practice to supplies made to an individual consumer. This results in VAT being charged on the value added by the supplier, i.e. his gross margin. It is entirely consistent with the underlying purpose of the VAT system, and the underlying intention of the special scheme under EU law. Otherwise, there could be very many commercial conferences for which an application of TOMS would create irrecoverable VAT.

53. However, if services are being supplied wholly within the UK to a fully taxable business, the result is that the recovery of VAT may be blocked in a manner inconsistent with the VAT system. While it may well be the case that the conferences organised by TIME in the UK are eventually supplied to individuals who should not be entitled to any VAT recovery, the application of TOMS for the onward supply by the recipient customer, as required by HMRC ensures that such VAT is borne, as intended by the end user. The disapplication of TOMS, as advocated by HMRC, in the supply to the fully taxable intermediate business, results in the creation of a significant amount of irrecoverable VAT.

54. As a direct result of the assessments raised by HMRC, TIME have gone into liquidation. This has deprived the Treasury of the corporation tax, PAYE and NIC that was previously contributed by the business each year. HMRC have failed to look at the bigger picture in an area where they admitted there could be a problem, and then failed to mention a relevant ECJ decision when the appeal was heard.

The Decision

55. The ECJ decision makes it very clear that TOMS can be applied to all supplies falling to be treated as the provision of travel facilities. Accordingly TIME were entitled to apply the ECJ decision directly as soon as the law changed in 2011 relating to the place of supply of conference services. The assessments should therefore have been limited to the VAT which should have been accounted for using TOMS on each individual conference.

56. Accordingly the appeal is allowed, and HMRC will need to establish the margin applicable to each of the EU conferences before raising further assessments, if they so

choose. It is also open to HMRC to assess for over recovered input VAT on the basis that they consider TOMS should apply to UK conferences.

57. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

SARAH ALLATT

TRIBUNAL JUDGE
RELEASE DATE: 19 JANUARY 2015