



5 April 2017

PRESS SUMMARY

Volkswagen Financial Services (UK) Ltd (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant) [2017] UKSC 26
On appeal from [2015] EWCA Civ 832

JUSTICES: Lord Neuberger (President), Lord Kerr, Lord Reed, Lord Carnwath, Lord Gill (Scotland)

BACKGROUND TO THE APPEAL

The respondent is a member of the Volkswagen (VW) Group and is used (through its 'retail sector') to provide hire purchase (HP) finance for the sale of vehicles manufactured by the group. When a customer of a VW dealership wishes to purchase a vehicle using finance from the respondent, the vehicle is acquired by the respondent and supplied to the customer on deferred payment terms under an HP contract.

In the course of its business the respondent incurs input tax as part of its expenditure. Where that expenditure is directly attributable to taxable supplies the input tax is deductible; where the supply is exempt the input tax is irrecoverable. This appeal concerns the treatment of general business overheads, not directly attributable to particular supplies: specifically, whether any of the residual input tax paid by the respondent in respect of general business overheads is deductible against the output tax paid on the taxable supply of vehicles to customers.

In December 2007 the appellant agreed to a new, updated version of a partial exemption special method (PESM) with the respondent for determining the allowable proportion of residual input tax. It did not, however, agree to the respondent's proposed methodology for retail (under which HP falls). The appellant's approach is that overheads are all attributable to the exempt supplies of finance and the input tax is therefore irrecoverable. The respondent, meanwhile, argues that the residual input tax should be in proportion to the ratio of taxable transactions to the whole, which has the effect of splitting the residual input tax 50/50 for HP transactions. That issue was decided in favour of the respondent by the First Tier Tribunal (FTT) and Court of Appeal, while the Upper Tribunal (UT) had supported the approach of the appellant.

A secondary issue between the parties is the appellant's argument that it had a fall-back position on the amount of the apportionment that the FTT had failed to consider. The UT considered an extract from the hearing notes of Judge Berner in the FTT as supporting the appellant's claim that it had asked the FTT to consider in the alternative whether a lesser figure than 50% should have been attributed to the taxable supplies. The Court of Appeal, however, disagreed, holding that the appellant did not attempt to rely on an alternative methodology before the FTT.

JUDGMENT

On the main issue in the appeal the Supreme Court makes a reference to the Court of Justice of the European Union (CJEU). On the second issue, the Court unanimously dismisses the ground of appeal. Lord Carnwath gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

On the primary issue in the appeal, the Court decides that a reference to the CJEU is necessary to reach a conclusion [3]. Its questions to the CJEU include: where general overhead costs attributed to hire purchase transactions (which consist of exempt supplies of finance and taxable supplies of cars), have been incorporated only into the price of the taxable person's exempt supplies of finance, does the taxable person have a right to deduct any of the input tax on those costs? Further, can it be legitimate in principle to ignore the value of the taxable supplies of cars (or their value) for the purposes of arriving at a special method under Article 173(2)(c) of Council Directive 2006/112/EC?

Determination of the secondary issue does not require examination of general questions about the tribunal's role. One of the strengths of the tribunal system is the flexibility of its procedures, which need to be adapted to a wide range of types of case and litigant. There may be some circumstances where a more inquisitorial approach is appropriate, but where the tribunal is dealing with substantial litigants represented by experienced counsel, it is entitled to assume that the parties will have identified what they regard as relevant issues for decision [7].

Particular importance is attached to the tribunal's understanding of the issue before it, as apparent from the tribunal's own introduction to the detailed discussion at paragraph 41 [8]. The Court has no material to go behind the clear statement of the position as the tribunal understood it, having itself apparently sought clarification. If the tribunal was thought to have misunderstood the appellant's position and failed to deal with a significant issue, the matter could have been raised with them and sorted out at that point [9]. As the tribunal's understanding is consistent with the lack of any specific reference to this issue in the appellant's written submissions or in the evidence of its witness, this ground of appeal is dismissed.

References in square brackets are to paragraphs in the judgment

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <http://supremecourt.uk/decided-cases/index.html>