VAT

IS VAT PAYABLE ON DELIVERY FEES?

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It is common practice for suppliers to deliver the goods that they supply at the premises of their customers on the customer’s request. The suppliers then either deliver the goods themselves or they contract the services of third parties to deliver the goods on their behalf, for which they charge a delivery fee. The question that arises is whether the supplier should charge value-added tax ("VAT") on the delivery fee, particularly where the supplier acquires the services of a third party to deliver the goods, and merely recovers the delivery fee from the customer charged by the third party.

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The tax court recently considered the VAT status of delivery fees charged by a taxpayer that carries on a fast foods delivery business. The taxpayer contracted with fast food outlets to advertise their menus in a booklet, which it then distributes to households in the area in which the taxpayer operates. Customers order fast foods from the taxpayer by placing a telephonic order. The taxpayer in turn places the order with the relevant fast food outlet, dispatches a driver to the outlet to collect and pay for the food, and to deliver the food to the customer.

The taxpayer charges a fixed percentage of the price of the food purchased by customers as a commission to the fast food outlet, on which it levies and accounts for VAT. The taxpayer charges the price of the food to the customer without any mark-up, and also includes a delivery charge on the tax invoice issued to the customer, which it describes as ‘driver’s petrol money’. The driver, who is required to wear the branded clothing of the taxpayer and to carry hotboxes branded with the taxpayer’s logo, is entitled to retain the ‘driver’s petrol money’ collected from the customer. The issue under
dispute was whether the ‘driver’s petrol money’ is subject to VAT in the hands of the taxpayer.

In the recent matter, the taxpayer contended that the drivers who collected and delivered the fast food were independent contractors and were not its employees, and that the collection and delivery of the food was not a supply made by the taxpayer. The taxpayer argued that the only service that it supplies is receiving the phone call, placing the order with the outlet and communicating the order to the independent drivers who then collect and deliver the food. It further contended that its only clients are the food outlets from whom it receives a commission, and the callers who placed the orders were not its clients. The ‘river’s petrol money’ was paid to the driver directly, and to the extent that the taxpayer collected the petrol money (for example where the customer paid electronically), the taxpayer argued that it did so as agent on behalf of the driver.

The tax court had to consider whether the ‘driver’s petrol money’ comprised consideration for VAT purposes for any supply made by the taxpayer to its customers, i.e. whether it was a payment made in respect of, in response to, or for the inducement of the supply of any goods or services by the taxpayer.

The tax court considered certain United Kingdom authorities on the issue, and took a pragmatic view based on these authorities in analysing the VAT implications. The tax court disregarded a provision in the driver’s contract that the taxpayer does not remunerate the driver for the delivery of the food because the client pays the delivery fee directly to the driver, as it considered this provision to be contrary to the facts. The facts indicated that the taxpayer outsources its delivery services to the drivers. The tax court disregarded a provision in the driver’s contract that the taxpayer does not remunerate the driver for the delivery of the food because the client pays the delivery fee directly to the driver, as it considered this provision to be contrary to the facts. The facts indicated that the taxpayer outsources its delivery services to the drivers. The court stated that although the drivers are independent contractors, this is not relevant in determining whether the taxpayer supplies the delivery service, as it does so by using sub-contracted drivers for which it charges a fee to the customers. It is further irrelevant that the delivery fees did not generate any profit for the taxpayer.

The tax court also considered the economic reality of the taxpayer’s business, which required it to collect the food from the fast food outlets and to deliver it to the customers. Without the delivery service component, the taxpayer’s business cannot function. The drivers wear the branded clothing of the taxpayer and present themselves to the customers as if they are an integral part of the taxpayer’s business. The taxpayer is further only able to generate the commission income from the fast food outlets because it also offers the delivery service, even if the service is characterised as arranging the delivery of the food, rather than an actual delivery service.

Based on this analysis, the tax court held that the ‘driver’s petrol money’ is a payment made by the customer in respect of, or, in response to the service provided by the taxpayer, whether that service comprises the actual supply or the arranging of the supply of the delivery service. The driver’s right to retain the payments received is in terms of their contract with the taxpayer, and not in terms of any agreement with the customer. The ‘driver’s petrol money’ was therefore held to be subject to VAT in the hands of the taxpayer.

The judgment of the tax court provides valuable guidance as to whether any amount charged to a customer, including delivery fees, comprises consideration for a service supplied to the customer which attracts VAT. Delivery fees and similar charges are often considered to be merely a non-taxable reimbursement of costs incurred on behalf of the customer, and their VAT status should be reviewed in view of this judgment. In determining whether such charges are subject to VAT, it is not sufficient to rely only on the agreements between the parties, but the facts and the commercial and economic reality of the taxpayer’s business should also be considered.

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