TC03853

Appeal number: TC/2013/02388

VAT – input tax – five invoices – whether supply to appellant or to directors personally – whether benefit in kind or pecuniary liability – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

HELMBRIDGE LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE TIMOTHY HERRINGTON
MS HELEN MYERSCOUGH

Sitting in public at 45 Bedford Square London WC1 on 10 January 2014 and 3 July 2014

Mr John da Rocha, Director, for the Appellant

Mr Bill Brooke, Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The appellant in this case, Helmbridge Limited ("HL"), claimed input tax on five invoices issued by Helmbridge Solicitors ("HS"). HL's Managing Director is John da Rocha. At the relevant time he was also the Principal of HS, a sole practioner firm.

2. HMRC repaid the input tax on four of the invoices, but subsequently issued assessments to recover the VAT. HMRC also refused to repay the input tax on a fifth invoice issued by HS. HL appealed to the Tribunal. There were other matters in dispute in respect of the appeal, but during the course of the hearing these were resolved

3. This decision notice first sets out the sources of evidence and the facts not in dispute, and then goes on to consider each of the five invoices in turn. The legislation and regulations, so far as relevant to this decision, are included as an Appendix.

Evidence

4. The Tribunal was provided with the correspondence between the parties, an agreement dated 14 April 2003 between HL and Mr and Mrs da Rocha ("the 2003 Agreement"), and HL's statutory accounts for the years ended 30 April 2009 and 2010. We were also provided with terms of engagement dated 29 November 2006 ("the terms of engagement") between HS and Mr and Mrs da Rocha relating to litigation conducted by HS on behalf of Mr and Mrs da Rocha.

5. Mr da Rocha supplied a witness statement and was cross-examined by Mr Brooke. Mr Jeffrey Ruddell, the officer of HMRC who conducted the investigation into HL's input tax claims, also provided a witness statement, on which he was cross-examined.

6. Mr da Rocha served his witness statement out of time on 8 January 2014. The Tribunal decided to admit this statement and its exhibits out of time. One of the exhibits was an invoice dated 31 January 2009 in respect of accounting and legal services purportedly provided by HS to HL between 1 July 2006 and 30 November 2008 in the sum of £30,242.37 plus VAT of £4,356.38.

7. This invoice caused some confusion at the hearing on 10 January 2014 as to how it related to the matters in dispute in this appeal.

8. HMRC looked into this invoice after the hearing of the appeal was adjourned part heard on 10 January 2014. They made an application at the outset of the resumption of the hearing on 3 July 2014 to admit further evidence in relation to it, namely HL's VAT return for the quarter ended 31 January 2009, showing a reclaim of £4,356.38 and the invoices supporting that reclaim. HMRC sought to adduce this evidence in support of its contention that the invoice exhibited to Mr da Rocha's witness statement was in effect covering the same ground as the reclaim sought in the January 2009 return and should therefore be ignored. Mr da Rocha had no objection

to the admission of this fresh evidence and accordingly we admitted it. As a result the Tribunal is able to deal with HMRC's assessments which are in dispute in this appeal by reference to all the relevant underlying invoices, HMRC's assessment in respect of the quarter ended 31 January 2009 previously being supported by evidence provided by Mr da Rocha in relation to the services provided in respect of which a claim for repayment of VAT had been made.

9. We deal with the position regarding the invoice exhibited to Mr da Rocha's witness statement after considering the position in respect of the other invoices.

Facts not in dispute

10. This part of the decision notice sets out the background to the case. Unless otherwise indicated, these facts are not in dispute. We make further findings of fact later in this decision notice.

Background

11. HL's business was described in its application for registration for VAT as legal practitioners and consultants. It appears however, that its business is wider than that; Mr da Rocha in his letter of 25 May 2011 in answer to Mr Ruddell's enquiries disclosed that HL had also been involved in the sale of properties and was negotiating the purchase of further property to be let to provide an income for HL. This is consistent with Mr Ruddell's evidence; in his witness statement he stated that Mr da Rocha had told him when they met on 12 May 2011 that HL was involved in general trading and property matters and this evidence was not challenged. At all material times HL has been VAT registered. HL's share capital is wholly owned by Mr da Rocha and his wife, Mrs Abisoye da Rocha, in equal shares. Mr and Mrs da Rocha have been the company's sole directors, although Mrs da Rocha alone is currently the sole director. The 2003 Agreement provided for Mr and Mrs da Rocha to be paid "such remuneration as may be agreed from time to time" for their services as directors.

12. The 2003 Agreement also provided that the directors were each to receive "drawings of £2,000 per month on account of his share of dividends etc". There is no evidence as to drawings taken by the directors and we make no finding of fact as to whether or not this term was ever operated.

13. HL's statutory accounts for the year ended 30 April 2009 show no trading activity on its profit and loss account. Its balance sheet has a single asset of £1,000 consisting of cash at bank, representing paid up share capital.

14. On 30 September 2009 HS ceased trading, because it was unable to obtain professional indemnity insurance. It was deregistered for VAT purposes with effect from 1 October 2009.

15. The profit and loss account contained within HL's statutory accounts for the year ended 30 April 2010 shows:

(1) turnover of £11,091;

(2) operating expenses of £28,442, being £18,342 of general administrative costs, salaries of £7,000 and general costs of £3,100; and

(3) a loss for the year of £17,531 (£11,091-£28,442).

16. The principal asset on the balance sheet for the same accounting period was debtors/unpaid fees of £96,801. No amount was shown as due to creditors.

The First Three Invoices

17. On its VAT return for the quarter ended 31 January 2009, HL showed no VAT due in respect of sales but included a reclaim for input tax of £4,356.38, being the VAT charged at 17.5% on three invoices all bearing a Tax Date of 30 January 2009. The invoices covered work done in the periods 28 September 2006 to 30 September 2007, 1 October 2007 to 1 October 2008 and 2 October 2008 to 31 January 2009 respectively. These invoices, addressed to HL and issued by HS, were numbered 0490A, 0490B and 0490C respectively.

18. According to the narrative, which was identical on each invoice, the services provided consisted of work done in relation to "your matter J and A da Rocha-Afodu v Mortgage Express Limited". During the subsequent HMRC assurance visit, Mr da Rocha told Mr Ruddell that these services were in respect of advice given to him and his wife personally in connection with their proceedings against their former mortgage lender for conversion of their chattels, destroyed by the mortgage lender following repossession of their house ("the conversion proceedings"). Mr Ruddell did not dispute that these legal services were supplied, although as discussed later in this decision notice, he did challenge whether they were supplied to HL or to Mr and Mrs da Rocha personally. At this stage, we find only that HS were on the record as the solicitors acting for Mr and Mrs da Rocha in the conversion proceedings, and that the First Three Invoices relate to services provided in relation to those proceedings.

The Fourth Invoice

19. On its VAT return for the quarter ended 31 October 2010, HL included input tax of £3,807.13, being the VAT charged at 17.5% on an invoice from HS for £21,755 ("the Fourth Invoice"). After taking other entries on the VAT return into account, the net position was a repayment of £3,616.30. HMRC paid this sum to HL.

20. The "Tax Date" shown on the Fourth Invoice was 15 September 2009, but the "Date Entered" was 28 September 2010. It was accepted by Mr da Rocha and we find as a fact that the "Date entered" was the date the invoice was delivered to HL.

21. According to the narrative on the Fourth Invoice the services consisted of general legal advice but it is common ground that they related to advice in respect of the conversion proceedings.

22. The terms of engagement were entered into between HS and Mr and Mrs da Rocha on 29 November 2006 and are stated to relate to Mr and Mrs Rocha's litigation matter against Mortgage Express under the "Tort Law of Conversion".

23. The conversion proceedings have been concluded following the handing down of a judgment by District Judge Langley on 19 January 2012 and an unsuccessful attempt to seek permission to appeal from the Court of Appeal. It is clear from the judgment that the proceedings had been conducted on the basis that all the chattels to which the proceedings related were the property of Mr and Mrs da Rocha.

The Fifth Invoice

24. HL submitted a VAT return for the quarter ended 30 April 2011 and claimed repayment of £11,252.49. The return included input tax of £6,125 charged on an invoice from HL for £35,000 plus VAT at 17.5% ("the Fifth Invoice").

25. The Fifth Invoice was identical in all respects to the Fourth Invoice, other than in quantum: it had the same "Tax Date", "Date entered" and narrative. Again, it was accepted by Mr da Rocha and we find as a fact that the "Date entered" was the date the invoice was delivered to HL.

26. At this stage we make no further findings of fact in relation to the Fifth Invoice.

Subsequent events

27. Following submission of its 30 April 2011 VAT return, HL was selected for "assurance action" by HMRC. On 12 May 2011 Mr Ruddell met Mr da Rocha at an HMRC office in Harrow. Considerable discussion and correspondence took place between that date and January 2013 as to the validity of HL's claims for input tax on the five invoices.

28. By letter dated 14 January 2013 Mr Ruddell informed Mr da Rocha that he did not accept that HL could claim an input tax deduction for any of the five invoices. He raised assessments to recover the input tax already repaid on the first four invoices and disallowed HL's repayment claim in respect of the Fifth invoice.

29. On 1 March 2013, following a statutory review, HMRC confirmed Mr Ruddell's decisions. On 2 April 2013 HL filed a notice of appeal with the Tribunal.

30. On a date between 14 January 2013 and 1 March 2013, HS submitted its final VAT return and included thereon the VAT charged on the Fourth and Fifth Invoices. As at the date of the Tribunal hearing, no output tax had been paid over to HMRC in respect of the VAT shown on that return and none of the five invoices had been settled by way of a cash payment from HL to HS.

The First Three Invoices

The issues between the parties

31. During the course of the hearing it became apparent that the following issues were in dispute and in order to determine this appeal in relation to the first three invoices we need to consider the following:

(1) Were the services concerned supplied to HL or to Mr and Mrs da Rocha personally;

(2) If the services concerned were provided to HL, whether they constituted the provision of a benefit in kind to Mr and Mrs da Rocha, and if so, whether they were provided for the purposes of HL's business.

(3) If HL succeeds on both of the first two issues, whether HMRC can claw back the input tax concerned because the invoices have not been paid within the required time limit;

(4) If HL succeeds on the third issue, whether the Fourth and Fifth Invoices concerned are in fact VAT invoices, bearing in mind that they were issued after HS ceased to be registered for VAT purposes;

(5) If not, whether those invoices nevertheless constitute "other evidence" of a taxable supply so that they can be relied on for VAT purposes;

(6) If the fifth issue is decided in favour of HL, whether the time limits in Regulation 29 of the VAT Regulations 1995 are in issue.

32. It is apparent from the foregoing that we do not need to deal with any of the third to sixth issues if we determine either or both of the first two issues against HL and we do not need to determine the second issue if we find against HL on the first issue.

33. There was no dispute between the parties that HMRC have power to investigate claims for input deductions and notwithstanding the production of what purports to be a valid VAT invoice for the supplies in question, HMRC also have the power to deny claims if they consider that the necessary conditions for a deduction as provided for in Articles 167 and 168 of the Principal VAT Directive have not been satisfied.

34. HMRC have repaid the input tax in relation to the First Three Invoices but now consider this to be incorrect on the basis that the services concerned were not used for the purpose of HL's business. It is not disputed that if HMRC are correct, section 73(2) of the Value Added Tax Act 1994 gives HMRC the power to raise an assessment to recover that input tax.

The first issue: whether services supplied to Mr and Mrs da Rocha personally

35. Mr da Rocha's case was that the services had been supplied to HL for the purposes of its business. Mr Brooke said that the supplies concerned were made to Mr and Mrs da Rocha in their personal capacity and if Mr Brooke is right on this issue it is unnecessary to consider whether the supplies would have been for HL's business purposes: that question is only relevant if the supply was to HL.

36. We have therefore first considered whether the supply was to Mr and Mrs da Rocha personally.

37. Mr Da Rocha submits that the services concerned were provided to HL rather than Mr and Mrs da Rocha personally for two reasons. First, he submits that the conversion proceedings related not only to Mr and Mrs da Rocha's possessions but also those of HL, in that some of the goods allegedly converted belonged to HL. Second, he submits that, pursuant to the authority contained in the 2003 Agreement,

HL had agreed as part of the remuneration of Mr and Mrs da Rocha as directors of HL to meet the legal fees payable to HS in respect of the conversion proceedings.

38. Mr da Rocha relies on a number of authorities to support his submissions.

39. First he referred us to the House of Lords decision in *Rendell v Went* [1964] 2 AER 464. Mr da Rocha submits that this case is authority for the proposition that a company can pay for the entirety of the legal expenses of one of its directors and such expenditure is to be regarded as the expenditure of the company. In that case, the company paid the costs of a director's defence to a charge of causing death by dangerous driving. He was assessed to income tax in the sum of £641 as a perquisite of his office under sections 160 and 161 of the Income Tax Act 1952. Mr da Rocha relies on the fact that the expenses were both a benefit assessable to tax in the hand of the recipient, but also were expended for the company's own interests in order to retain the taxpayer's services; Mr da Rocha sees the fees payable in respect of the conversion proceedings in the same light.

40. Secondly, he referred us to *Durnell Marketing Limited v The Commissioners of Customs and Excise* (2002) Decision Number 17813, and implicitly, *Customs and Excise Commissioners v Redrow Group Plc* [1999] STC 161, which laid down the relevant principles which were applied in *Durnell*.

41. In *Redrow*, the taxpayer agreed to pay the estate agents fees of prospective purchasers. The House of Lords decided that the taxpayer could nevertheless reclaim the VAT on the estate agents' invoices.

42. Lord Millett at page 171 set out how to identify the recipient of a supply of services for the purposes of input tax deduction. Lord Millet's starting point was that a supply of services had two fundamental features:

> "The first is that anything done for a consideration which is not a supply of goods constitutes a supply of services. This makes it unnecessary to define the services in question. The second is that unless the services are rendered for a consideration they cannot constitute the subject matter of a supply. In fact, of course, there can be no question of deducting input tax unless the taxpayer has incurred a liability to pay it as part of the consideration payable by him for a supply of goods or services.
>
> In my opinion, these two factors compel the conclusion that one should start with the taxpayer's claim to deduct tax. He must identify the payment of which the tax to be deducted formed part; if the goods or services are to be paid for by someone else he has no claim to deduction. Once the taxpayer has identified the payment the question to be asked is: did he obtain anything – anything at all – used or to be used for the purposes of his business in return for that payment? This will normally consist of the supply of goods or services to the taxpayer. But it may equally well consist of the right to have goods delivered or services rendered to a third party. The grant of such a right is itself a supply of services."

43. In essence Mr da Rocha says that the same approach should be used in this case, because:

(1) The 2003 Agreement makes provision for services to be supplied to HL for the benefit of Mr and Mrs da Rocha.

(2) The invoice was addressed to HL and it is that company who will in due course pay the invoice. Thus HL incurred the liability to pay the invoice, satisfying the test in the first of the two *Redrow* paragraphs set out above.

(3) There was also no difficulty identifying the payment.

(4) HL obtained something for the purposes of its business in return for the payment.

44. Mr da Rocha said he accepted that the direct tax consequence of his argument was that HL had provided him and Mrs da Rocha with a benefit in kind.

45. Mr da Rocha said HL had not filed form P11Ds in respect of those benefits and indeed that he did not know what a form P11D was. He said he was relying on the Income Tax (Earnings and Pensions) Act 2003, s 62 and had made this plain to Mr Ruddell in his earlier correspondence.

46. In *Durnell,* the taxpayer company was invoiced for works carried out at the company's director's property. The company sought to reclaim the relevant input tax on the basis that the goods and services were carried out for its two directors as benefits in kind in recognition for their services.

47. In answering the question as to whether the Appellant was the recipient of the supply the Tribunal, applying the principles laid down by Lord Millett in *Redrow* found at paragraph 40 of the Decision:

> "The tribunal agrees with Mr Vallat that the important question is whether the company obtained "anything – anything at all" for the payments. We find that it did: it obtained the right for the various construction services to be performed at, and certain goods delivered to the directors' house. In applying the *Redrow* judgment the exercise of this right is clearly a supply of services to the Appellant. The fact that the directors benefited from this does not change the analysis. The Respondents' contention that a supply of a particular nature should first be identified and then the question asked as to who received it cannot in our view be accepted in the light of *Redrow*."

48. Therefore, it appears to us that the key question is whether there was any right acquired by HL in relation to the provision of the legal services by HS. In that context it is necessary to look at the relevant facts.

49. The evidence points overwhelmingly to the conclusion that the services were provided to Mr and Mrs da Rocha personally.

50. At all times the proceedings were in the name of Mr and Mrs da Rocha. HL was never a party to the proceedings. The terms and agreement provided that the litigation was being conducted on behalf of Mr and Mrs da Rocha. HS were on the record as

solicitors for Mr and Mrs da Rocha and the obvious conclusion to draw is that the supply of legal services was from HS to Mr and Mrs Rocha.

51. We reject Mr da Rocha's evidence that HS had an interest in the proceedings because some of the assets which were the subject of the conversion proceedings belonged to HL. We had in evidence a schedule of the assets allegedly in the property at the time it was repossessed which was produced in the conversion proceedings. Mr da Rocha contended that some of those assets (notably the assets listed as being in the study and some in the garage) belonged to HL as they were clearly business rather than personal assets. However, there was no evidence to support this claim and had that been the case it would have been expected that HL would have been a party to the conversion proceedings as well as Mr da Rocha but it is clear that the proceedings were conducted on the basis that the assets concerned belonged to Mr and Mrs da Rocha. HL's alleged ownership of those assets is never mentioned in the judgment in those proceedings.

52. Neither do we believe that the 2003 Agreement assists HL. It merely provides a framework pursuant to which HL may remunerate its directors for their services. That remuneration would be reward for work done by the directors for the company; it is not a payment to a third party for services supplied. The 2003 Agreement contains no terms specifically providing that HL would have the right to receive the benefit of the legal services provided by HS in respect of the conversion proceedings but merely allows Mr and Mrs da Rocha to provide their own personal services directly to HL as directors of that company in exchange for payments to be made to them by HL. There is no term which requires HL to pay HS for any services, whether provided to it directly or for the benefit of its directors.

53. Furthermore, had the services been provided to HL we would have expected the sums concerned to be reflected in the 2010 accounts. If HL was legally obliged to pay HS for those services there should have been an accrual in the accounts or the amount should be included as amounts due to creditors. Our findings on the contents of those accounts clearly indicate that no such accrual or creditor is to be found. The reasonable inference was that, as at the date the 2010 accounts were made up, HL had no obligation to pay the legal fees relating to the conversion proceedings.

54. In essence, if there was a legally binding obligation on the part of HL to pay the first three invoices it must be characterised as an agreement to meet Mr and Mrs da Rocha's obligations to HS. This is consistent with Mr da Rocha's letter to Mr Ruddell of 23 May 2011 where Mr da Rocha stated that the invoices in question had been settled by the conferment of a benefit in kind on the directors, that is HL had agreed to remunerate the directors by meeting their obligations in respect of payment for HS's services provided to Mr and Mrs da Rocha in respect of the conversion proceedings. This language supports the position that there was a pre-existing obligation which HL had agreed to meet.

55. Mr da Rocha had stated in this letter that the relevant direct tax charging provision was section 62 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"). This is the charging provision for general earnings, covering salaries, benefits that will be converted into money, and the meaning of pecuniary liabilities. Where there is no money's worth, benefits in kind are charged under a different part of ITEPA namely the benefits code at ITEPA Part 4, Chapters 3 to 11.

56. A pecuniary liability arises where an employer meets an employee's obligation. The correct analysis of the first three invoices is that HL was meeting Mr and Mrs da Rocha's pecuniary liability for their own legal fees. Pecuniary liabilities are dealt with under the normal rules for PAYE; there is no need for a P11D which is only required where the benefits code is in issue.

57. As a result of this analysis of the facts, it is clear that the position is distinguished from *Redrow* and *Durnell*. In *Redrow* Lord Millet said that input tax cannot be deducted unless the taxpayer has incurred a liability to pay the incurred services; a person cannot deduct input tax simply as a result of receiving the supplier's invoice and paying the amount shown on it. Rather it is necessary to find out who incurred the obligation. In both those cases, the question was whether the company itself acquired "anything at all" for the payments it made. In *Redrow*, the House of Lords held that the right to have goods delivered or services provided to a third party was a supply of services to the company, and in *Durnell* the company received the right for the various construction services to be performed and, certain goods delivered to, the directors' house. In *Redrow* there was no doubt that the estate agents received their instructions from *Redrow* and were acting on those instructions.

58. In this case HL acquired no rights for the delivery of any services but simply met the liabilities of Mr and Mrs da Rocha. It never had a contract for the supply of services, the contractual obligation to provide the services being purely one on the part of HS to Mr and Mrs da Rocha. The agreement by HL to meet Mr and Mrs da Rocha's obligations to pay for those services does not amount to the provision of services by HS to HL. This appears also to be the position in *Rendell v Went;* the position there was that the company agreed to meet a pecuniary liability of the director. That case therefore cannot assist HL.

59. For completeness, we should refer to the submission made by Mr da Rocha on the case of *Bray Walker v Commissioners of Customs and Excise* (2003) VTD 18339. This case held that where a director of a company, who was also a partner in a firm of solicitors who were the solicitors to the company and gave legal advice to the company, the firm of solicitors provided supplies to the company for VAT purposes when providing the partner's services. Mr da Rocha submitted that Mr Rocha's work as the principal of HS amounted to supplies from HS to HL.

60. We do not believe this case helps Mr da Rocha. There is no evidence here that the nature of the arrangement between HL and HS was the provision of Mr da Rocha's services to HL. The only services provided by HS were to Mr and Mrs da Rocha in the course of the litigation; the fact that Mr da Rocha was himself the solicitor of record in those proceedings makes no difference to that analysis.

61. On that basis, as the services detailed on the First Three Invoices were not provided to HL it cannot claim a deduction for the input tax concerned. As a result, HMRC's assessment to recover VAT of £4,356.38 in relation to the First Three Invoices is upheld.

62. As a result of that conclusion it is unnecessary for us to consider any of the other issues we identified above and we can proceed directly to consider the position of the Fourth Invoice.

The Fourth Invoice

63. We can deal with this very briefly as we have found that the Fourth Invoice relates to the conversion proceedings.

64. Consequently, as a result of our analysis in relation to the First Three Invoices, we find that the services charged for on the Fourth Invoice were supplied to Mr and Mrs da Rocha personally and not to HL and the input tax cannot be recovered by HL. As a result, HMRC's assessment to VAT of £3,807.13 in respect of this invoice is upheld and the appeal is dismissed in relation to this invoice.

The Fifth Invoice

65. We have already made findings of fact that the Fifth Invoice was for £35,000, plus VAT of £6,125, the "Tax Date" was 15 September 2009, and the "date entered" was 28 September 2010. These dates are identical to those on the Fourth Invoice.

66. The only difference between the two invoices, other than the amount, is that the VAT on the Fourth Invoice was included on HL's VAT return for the quarter in which it was delivered to HL, while the VAT on the Fourth Invoice was not included on HL's VAT return until the quarter ended 30 April 2011, six months later.

67. For the same reasons as set out in relation to the Fourth Invoice, we find as a fact that the services were supplied to Mr and Mrs da Rocha personally and not to HL.

68. We therefore dismiss HL's appeal against HMRC's refusal to repay input VAT of £6,125 in respect of the Fifth Invoice.

The Invoice exhibited to Mr da Rocha's witness statement

69. Mr da Rocha exhibited this invoice in support of a statement in his witness statement that it explains the work carried out by HS for HL "in full" in the context of the claim for input tax in relation to the Fourth Invoice.

70. The Tribunal was therefore concerned as to whether this invoice (numbered 0409A) was therefore to be regarded as alternative evidence for any of the amount claimed as input tax deductions and which is the subject of this appeal.

71. HMRC have now produced the First Three Invoices, which support the claim for input tax deduction made on the return for the quarterly period ended 31 January

2010, in the same amount of £4,356.85 which is shown as the VAT payable by HL on Invoice 0490A, and the three invoices bear very similar numbers to Invoice 0490A, that is 0490B, C and D.

72. Mr da Rocha submitted that Invoice 0490A relates to entirely different services to those provided under the first three invoices, which relate to the claim made on the return for the period ended 31 January 2009.

73. The coincidence of the numbering of the invoices and the amount of VAT specified leads us to doubt that in reality Invoice 0490A relates to entirely different services. However Invoice 0490A itself and the amount shown on it in respect of VAT is not in dispute in these proceedings. We therefore accept Mr Brooke's submission that Invoice 0490A is irrelevant to these proceedings and can be disregarded. We therefore made no further findings in relation to that invoice.

The Tribunal decision and appeal rights

74. For the reasons set out above, our decision is that HL's appeal fails in relation to all five invoices.

75. 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 Rules. 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.

TIMOTHY HERRINGTON
TRIBUNAL JUDGE

RELEASE DATE: 30 July 2014

APPENDIX:

RELEVANT LEGISLATION AND REGULATIONS

DIRECTIVE 2006/112/EC - THE PRINCIPAL VAT DIRECTIVE

Article 167

A right of deduction shall arise at the time the deductible tax becomes chargeable.

Article 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person…

THE VALUE ADDED TAX ACT 1994

24 Input tax and output tax

(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say—

(a) VAT on the supply to him of any goods or services…

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

(2)-(5)…

(6) Regulations may provide—

(a) for VAT on the supply of goods or services to a taxable person, …to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases.

25 Payment by reference to accounting periods and credit for input tax against output tax

(1) A taxable person shall—

(a) in respect of supplies made by him, and

(b) in respect of the acquisition by him from other member States of any goods,

account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

(3) If either no output tax is due at the end of the period, or the amount of the credit exceeds that of the output tax then, subject to subsections (4) and (5) below, the amount of the credit or, as the case may be, the amount of the excess shall be paid to the taxable person by the Commissioners; and an amount which is due under this subsection is referred to in this Act as a "VAT credit".

(4)-(5) …

(6) A deduction under subsection (2) above and payment of a VAT credit shall not be made or paid except on a claim made in such manner and at such time as may be determined by or under regulations; and, in the case of a person who has made no taxable supplies in the period concerned or any previous period, payment of a VAT credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to repayment in specified circumstances.

26 Input tax allowable under section 25

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

(a) taxable supplies;…

73 Failure to make returns etc

(1) …

(2) In any case where, for any prescribed accounting period, there has been paid or credited to any person—

(a) as being a repayment or refund of VAT, or

(b) as being due to him as a VAT credit,

an amount which ought not to have been so paid or credited, or which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly.

(c) if the supply is a taxable supply, the person to whom the supply is made is not entitled under sections 25 and 26 to credit for all the VAT on the supply,

the Commissioners may direct that the value of the supply shall be taken to be its open market value.

(2)-(3)….

(4) For the purposes of this paragraph any question whether a person is connected with another shall be determined in accordance with section 1122 of the Corporation Tax Act 2010.

Schedule 11: Administration, collection and enforcement

2A VAT Invoices

(1) Regulations may require a taxable person supplying goods or services to provide an invoice (a “VAT invoice”) to the person supplied.

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

62 Earnings

(1) This section explains what is meant by "earnings" in the employment income Parts.

(2) In those Parts "earnings", in relation to an employment, means—

(a) any salary, wages or fee,

(b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth, or

(c) anything else that constitutes an emolument of the employment.

(3) For the purposes of subsection (2) "money's worth" means something that is—

(a) of direct monetary value to the employee, or

(b) capable of being converted into money or something of direct monetary value to the employee…