

The recent case of *Kollektivavtalsstiftelsen TRR Trygghetsradet v Skatteverket* indicates that HMRC have been, in part, misapplying the reverse supply rules in respect of intra EU supplies of services.

The Swedish Council for Redundancy Support and Advice (TRR) carried out two roles. It supplied services to businesses wishing to operate through outsourcing and was registered for VAT in Sweden in respect of these services and also offered redundancy support and advice which, it was agreed by all the parties, was a non-taxable supply. Therefore TRR carried out an economic activity for the purposes of VAT and a non-economic activity (which fell outside of the scope of VAT). TRR was supplied with services by a consultancy in Denmark and it was accepted that these third party consultancy services were directly attributable to the non-economic activities of TRR.

The reverse charge procedure requires that in respect of certain supplies, including consultancy services, the supply is deemed to be made where the recipient is established rather than where the supplier is established. Therefore the supplier in one member state is not required to account for VAT (and is treated as making a zero-rated supply) but instead the recipient in another member state is required to account for the VAT on the supply made to it to the tax authority in its member state.

For UK VAT purposes, HMRC have long considered that the reverse supply procedure only applies in respect of supplies made to the recipient in another

member state for the purposes of the recipient's economic activities.

The ECJ held in *Kollektivavtalsstiftelsen TRR Trygghetsradet v Skatteverket* however that if the recipient is a taxable person (registered or liable to be registered for VAT), the reverse charge procedure applies even where the supply is used solely for the purposes of the recipient's non-economic activities.

This may cause significant difficulties for the recipient as in respect of non-economic activities the VAT paid under the reverse supply procedure is almost certain to be non-recoverable as it is, by definition, attributable to a non-taxable supply i.e. in respect of its non-economic activities. On the other hand, the supplier of the services is somewhat better placed as, in the UK, it should be able to zero-rate the supply and hence not charge and be liable to account for VAT. Also it makes the compliance burden for the supplier somewhat simpler in that either the recipient in another member state is a taxable person and registered or liable to be registered for VAT or it is not; the supplier need not look behind that status to the nature of the recipient's activities in respect of the services to be made to the recipient.

The above case should be seen in the context of draft legislation which is being published amending the place of supply rules. The general rule will be that a supply of services will be deemed to be made where the recipient is established so that the reverse charge procedure will be the norm rather than the exception.

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