

VAT disbursements case - immediate action for law firms

Brabners LLP v HM Revenue & Customs (HMRC)

The recent First Tier Tribunal ruling against Brabners law firm upheld an HMRC VAT assessment of £68,000 and highlighted conflicting HMRC and Law Society views on the correct treatment of VAT on property searches.

The case concerned whether electronic search fees provided to Brabners were disbursements paid on behalf of their clients. Until this case, the Law Society's guidance had been to treat such costs as disbursements which meant that no VAT was chargeable. However, HMRC assessed Brabners on the basis that the searches only formed an incidental part of their overall service to clients and that the recharge of the search fees should follow the same treatment as their primary supply which was taxable.

Despite an intervention from the Law Society on behalf of the taxpayer, the Tax Tribunal agreed with HMRC that the recharge of search fees is not a disbursement and is therefore subject to VAT.

The Law Society has set up a working party to review the matter following the tribunal decision. It now advises to follow HMRC's published guidance until further notice. It remains to be seen whether the case will be appealed to the Upper Tier Tribunal. We will keep you informed of any further progress but, in the meantime, you might find this helpsheet useful in understanding your position and we've included a quicklist of action you can take now.

Common questions and immediate action

Should I charge VAT on property search fees disbursements now?

In short - yes.

If you've been following the Law Society guidance on this and not charging VAT on property search fees, we suggest that you should treat the cost of search fees as part of the service and apply VAT to the recharge from now on. This will avoid building up an additional potential liability to HMRC for VAT which should have been charged. You will of course be able to obtain credit for any VAT charged to you by the search provider.

Does the ruling apply to all search types?

No, but...

Although tribunal judge's view appears to extend to all search types, the case decision only relates to electronic searches. However, it may be wise to apply VAT to all search fee recharges until the position is clarified, bearing in mind that HMRC may seek to assess for a historical under-declaration of VAT. The rationale behind this, based on the Brabners case, is that the searches are used by your firm to produce the report for your client and not used directly by your client.

Does this apply to all disbursements?

No, disbursements are not subject to VAT, expenses are...which leads us to recommend that now (when it's clear that HMRC have the appetite to chase solicitors on VAT) would be a very good time to make sure you understand the HMRC definitions of a disbursements and expenses. Our specialist VAT team can provide training on this to give you peace of mind.

How far back can HMRC go?

4 years.

A First Tier Tribunal decision only binds the parties to the decision and, as an appeal is possible, we are not advising our clients to disclose any potential historic underpayments until further clarification is available. That said, it would certainly be wise to review your VAT position now. Get in touch if you are interested in a VAT healthcheck to ensure that you are compliant.

How much is this going to cost?

It all depends...

This is a question for which the answer is truly bespoke depending on your specific circumstances. Our best advice is to get in touch with our VAT team who can guide you.



Gain reassurance around your VAT practices

HMRC may now target law firms for VAT inspections and you should take this opportunity to ensure that all areas of your VAT accounting are compliant.

Here's a quicklist of things you can do now:

- **Charge VAT** on property search fees disbursements with immediate effect
- **Know your disbursements from your expenses** - make sure you and any relevant colleagues understand HMRC's definitions and how to correctly apply VAT on day-to-day matters
- **Get a VAT healthcheck** - let our specialists review your VAT records and overall VAT position to ensure compliance with key VAT requirements and alert you to any potential problem areas
- **Offload your VAT administration** - if you'd rather reduce the headaches you can face in dealing with your own VAT, our team can complete your regular VAT returns and take responsibility for your on-going VAT administration responsibilities
- **Don't worry about your historic position yet** - although you should take steps to understand your VAT position and any potential exposure, don't take any action to deal with your historic position until we can provide further clarification

Sagars—we've got you covered

In an incredibly complex field, John has an enviable depth of VAT knowledge and is experienced in supporting a range of clients. He joined (the then) HM Customs & Excise in 1987 and now he's a recognised expert on VAT and other indirect taxes such as Customs & Excise Duties, Financial Intermediaries, Landfill Tax and Insurance Premium Tax.

After working with H M Customs & Excise, John became a VAT manager at Coopers & Lybrand before taking partnership at Arthur Andersen in the early 90's. He then worked for PWC and joined the Sagars team from a consultant's role at Squire Sanders in Leeds. John provides bespoke VAT training for our clients, conducts VAT healthchecks, contributes to our publications and gives expert opinion on complex VAT matters.

t: 0113 297 6901

e: j.fuszard@sagars.co.uk



Jennifer provides VAT advice and solutions for a broad range of VAT matters including cross-border transactions, structuring, property transactions, mergers, acquisitions and compliance. She works with clients across all sectors and has particular experience in assisting those operating within utilities, charities and legal services.

Graduating from Leeds Beckett University with a first-class Law degree and the highest mark in her year, Jennifer went on to achieve qualification as a Chartered Accountant and Chartered Taxation Adviser. She gained practice experience with a Big 4 firm and latterly worked for in-house utilities teams. Jennifer supports Sagars clients with complex VAT queries and provides team training.

t: 0113 297 6700

e: j.mcgowan@sagars.co.uk



www.sagars.co.uk

Sagars Accountants Ltd, Gresham House, 5-7 St Pauls Street, Leeds LS1 2JG
T: 0113 297 6789 F: 0113 297 6790

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