



The recovery of pre - VAT Registration input tax is a subject of much debate. The case discussed in this Tax Alert focuses on pre – incorporation VAT and emphasises the issues and the arguments HMRC put forward to deny VAT recovery.

The case [Koolmove Limited v Revenue & Customs [2019] (UKFTT 502) (TC) (20 August 2019)] concerns HMRC's refusal to repay input tax relating to legal costs incurred by Mr McKee in defending a claim by his ex-employer, Jumar.

The basic facts are that Mr McKee was employed by Jumar and in his private time worked on software "The McKee Software". Mr McKee left Jumar, however, believing Mr McKee was leaving to develop the software product, Jumar sued Mr McKee for infringement of copyright, breach of confidence and breach of contract.

Mr McKee incurred significant legal costs in defending himself and recovered the input tax incurred on the legal costs through a new company (Koolmove) he had established to exploit the software product after he was successful in winning the case. HMRC argued that the VAT incurred on the legal costs was not recoverable by the newly incorporated company, as it was considered that Mr McKee incurred the legal costs in his personal capacity. HMRC also argued that the engagement letter with the legal team was with Mr McKee and not Koolmove.

Mr McKee challenged the HMRC view and argued that the legal costs were a business cost, as the company was set up with the intention of selling the software. Mr McKee emphasised that the company was incorporated as soon as his case against Jumar was successful and stressed that if he had not intended to commercialise the software, he would have not pursued a case against Jumar. He drew attention to the fact that Koolmove was not incorporated until after the proceedings, for if he had lost the case, he would have been unable to exploit his software product. Therefore, as the company was not incorporated until after the case, the engagement of the legal team was directly with himself.

The tribunal agreed that there was a direct and immediate link between the services provided by the lawyers and the business activity Mr McKee wished to pursue. The tribunal concluded that Mr McKee was allowed input VAT recovery on the legal costs incurred in the six months prior to the incorporation of Koolmove.

September 2019

Eighth Floor
6 New Street Square
New Fetter Lane
London EC4A 3AQ

And at

Q3, The Square
Randalls Way
Leatherhead
Surrey KT22 7TW

T +44 (0)20 7842 2000
F +44 (0)20 7842 2080

hello@rawlinson-hunter.com
www.rawlinson-hunter.com

Partners

Chris Bliss FCA
Mark Harris FCA
David Barker CTA
Kulwam Nagra FCA
Paul Baker ACA
Andrew Shilling FCA
Craig Davies FCA
Graeme Privett CTA
Chris Hawley ACA
Phil Collington CTA
Toby Crooks ACA
Michael Foster CTA
Paul Huggins ACA
Trevor Warmington CTA
Alex Temlett CA
James Randall FCA

Directors

Lynnette Bober FCA
Karen Doe
Lynne Hunt FCA
Gillian Lawrence CTA
Nigel Medhurst AIT
Al Nawrocki CTA
Mark Shaw
Catherine Thompson FCA
Tracy Underwood CTA
Alan Iye CTA
Yueling Wei FCCA
Sarah Fernando CTA

Consultants

Philip Prettejohn FCA

Senior Adviser
David Kilshaw

The Rawlinson & Hunter VAT consultancy advises on domestic and international transactions. We regard VAT as a key tax for many of our clients, which is why our service in this area is led by highly experienced and senior members of the tax team, with a proven track record of negotiation success on a range of VAT matters. Our aim is to provide commercially realistic advice and practical solutions to your VAT problems. We believe that VAT should be an important part of the wider tax planning for most businesses.

Our VAT team would be pleased to discuss your business and provide a view on your VAT efficiency. For an initial consultation, to see whether there is a need to consider your VAT affairs in more detail, please contact your usual Rawlinson & Hunter Partner or one of the following:

Nigel Medhurst
Director

Direct Dial: +44 (0) 20 7842 2150
Email: nigel.medhurst@rawlinson-hunter.com

Catherine Thompson
Director

Direct Dial: +44 (0) 20 7842 2028
Email: catherine.thompson@rawlinson-hunter.com