

Insights

VAT RECOVERY FOR GPS VAT GROUPED WITH MANAGERS IN ONSHORE INVESTMENT FUND STRUCTURES

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SUMMARY

In the recent case of *Melford Capital General Partner Ltd v HMRC*, the FTT concluded that a UK GP was entitled to full recovery of input VAT incurred on the establishment and operational costs of a UK LP Fund of which it was the general partner.

The key facts were as follows:

- the GP was VAT grouped with the UK Manager LLP;
- the Fund funded a holding company (with interest free loans and by subscribing for shares);
- the holding company in turn funded SPVs, which held UK commercial properties which were opted to tax;
- the LLP supplied management and administrative services to the Fund and also directly to the holding company and SPVs; and
- the LLP charged the recipients for such services.

Following HMRC guidance, the GP was regarded as carrying on the Fund's business for VAT purposes.

The taxpayer argued that the VAT group should be treated as a single person which raised capital from investors and invested in the Fund assets with a view to supplying management services to the GP and the SPVs. On that basis, the VAT group should be entitled fully to recover the VAT

incurred on the costs of establishing the Fund and the ongoing costs of managing the GP because the VAT group was making fully taxable outbound supplies.

By contrast, HMRC argued that the correct approach was to analyse the nature of the costs incurred and whether they were components of the outbound taxable supplies, rather than the status of the taxpayer as a member of the VAT group. HMRC argued that the group engaged in some non-economic activities to which the costs related, and that accordingly the group's recovery of input tax should be restricted.

The FTT agreed with the taxpayer's analysis and held that the GP was entitled to fully recover the input VAT incurred.

Practical implications:

- HMRC are likely to appeal the FTT's decision. It may take years for the issue to be resolved through the courts.
- In the meantime, businesses who have an identical or similar structure should consider making a protective claim for recovery of input VAT incurred which has been disallowed during the last 4 years.
- This would be a "protective" claim because HMRC are unlikely to make pay-outs until the issue is finally resolved.
- If and when the matter is resolved in favour of the taxpayer, the 4 years will date back from the date of the protective claim, rather than from the date of the final court decision.
- There may be structuring opportunities to increase VAT recovery for funds currently operating without a VAT group by applying to VAT group

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MEET THE TEAM



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