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CLIENT BRIEFING

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The Supreme Court agrees with the Court of Appeal in *Hotel La Tour* that input tax in respect of deal fees in relation to an exempt share sale is attributable to the share sale (and therefore irrecoverable), rather than to the taxpayer's downstream taxable general economic activities. Revenue & Customs Brief 6 (2025) sets out HMRC's policy on VAT deduction on insurance intermediary services supplied outside the UK. The need to identify and address tax challenges of global mobility of individuals is high on the agenda of the OECD and the Inclusive Framework. HMRC issue GfC16 to help multinational enterprises reduce uncertainty in their imported hybrid mismatch compliance.

Hotel La Tour: no special rule for recovery of VAT on fundraising transactions

The Supreme Court in *HMRC v Hotel La Tour Ltd* [2025] UKSC 46 unanimously rejected the appeal of Hotel La Tour (HLT) and determined that the input tax on deal fees connected with an exempt share sale is irrecoverable because of the direct and immediate link with the share sale. HLT was a holding company providing management services (for fees) to a wholly-owned subsidiary which ran a hotel business in Birmingham. HLT sold the subsidiary in order to part-fund a new hotel business in Milton Keynes and incurred fees for marketing, legal and accountancy services to assist with the share sale.

HLT argued that as the share sale's purpose was to raise funds for HLT's wider business, which included the making of taxable supplies, the input tax on the advisers' fees should be deductible. The First-tier Tribunal (FTT) and Upper Tribunal (UT) had effectively accepted the argument that input tax on deal fees should be recoverable where the share sale was for the purpose of funding taxable activity but the Court of Appeal did not recognise such a rule and neither did the Supreme Court.

Although the question of input tax recovery is of course fact-specific, the Supreme Court's judgment provides a useful summary of the relevant case law and includes clarification of some useful general principles of recoverability of input tax. There is plenty to unpack in this judgment and much will be written about it elsewhere so we have picked just three aspects to mention.

Cost component test

The Supreme Court confirms that the "cost component" test (in the context of determining whether inputs have a direct and immediate link with outputs) does not in fact require the costs to be a component of the price for the sale of the shares but simply requires that the fees were incurred for (or used in) the purpose of the share sale.

Difference in input tax recovery between exempt share sale and "outside the scope" share sale

Not all share sales will be exempt: it depends whether the share disposal is an economic activity. Where a holding company does not provide management services to a subsidiary for consideration, the disposal of those shares will not be an economic activity and the disposal will be outside the scope of VAT with the result that the costs relating to the disposal could be considered to form part of the taxable person's general costs (and potentially recoverable). HLT argued that fiscal neutrality required that "the VAT incurred on fees for services acquired to assist with a share sale are directly and immediately linked with the general business of the taxable person regardless of whether the share sale is exempt or out of scope". But the Supreme Court held that the principle of fiscal neutrality cannot justify ignoring the way particular transactions are treated as exempt or outside the scope by the legislature.

A general practice has developed over the years of ensuring that any new SPV set up to make an acquisition (BidCo) has a documented intention to make supplies of meaningful management services to the target group it is acquiring for consideration in order to ensure it is carrying on an economic activity and can recover input tax on its acquisition costs. Might this decision lead to this sort of planning in reverse in future? For example, ceasing to provide management services in advance of any disposal with a view to arguing the disposal is then outside the scope of VAT rather than exempt.

Limits of VAT group disregard rule

As an alternative to its main argument, the taxpayer also argued that as it was in a VAT group with its subsidiary, supplies between them should be ignored for *all* purposes. As this would mean the management services provided by HLT would be disregarded, HLT would not be carrying on an economic activity and so instead of being exempt, the share sale would be outside the scope of the VAT regime. This in turn would mean the fees had a direct and immediate link to the overall business and would be recoverable but the Supreme Court held the Court of Appeal was correct to reject this argument. There is nothing in CJEU case law that supports the argument that supplies between a parent and subsidiary in a VAT group are to be ignored for all purposes. HLT and its subsidiary retained their individual identities and economic activity was still taking place between them because HLT was engaged in managing its subsidiary for payment which amounts to economic activity for this purpose.

R&C Brief 6 (2025): VAT deduction on insurance intermediary services supplied outside the UK

To put Revenue & Customs Brief 6 (2025) into context, we must first recall the Hastings litigation. Hastings (UK) claimed input tax recovery in relation to supplies of exempt insurance intermediary services it made to Advantage (Gibraltar) which enabled Advantage to provide insurance to persons in the UK. The FTT in *Hastings Insurance Services v HMRC* [2018] UKFTT 27 held that Hastings' supplies were made in Gibraltar, that Hastings did not constitute a fixed establishment of Advantage in the UK and that, accordingly, Hastings could recover the input tax in relation to supplies of services to Advantage.

To counter this, HMRC introduced the "Offshore Looping Regulations" intended to prevent input tax recovery on exempt services 'looped' through an overseas territory and then supplied to final customers in the UK. Hastings then challenged the compatibility of the Offshore Looping Regulations with the Principal VAT Directive (PVD). The FTT found in *Hastings Insurance Services Ltd* (2025) UKFTT 275 (TC) that the Offshore Looping Regulations were incompatible with the PVD at the relevant time as the PVD required the UK to allow the deduction of input VAT on insurance-related services supplied to customers outside the EU. HMRC contended that "customer" here meant the "final consumer" i.e. the insured person, and that the Offshore Looping Regulations were compatible with the PVD but the FTT agreed with Hastings that "customer" here should have its ordinary meaning as the direct recipient of a supply (here Advantage) and on this basis the Offshore Looping Regulations were incompatible with the PVD. For the periods under dispute, the PVD had direct effect and could be relied on by Hastings which meant the regulations were ineffective in preventing input tax recovery.

HMRC have accepted the FTT's decision which is now final but it was unclear how HMRC would apply the decision to other insurers and for different time periods. Revenue & Customs Brief 6 (2025) sets out HMRC's policy on VAT deduction on insurance intermediary services supplied outside the UK. The Brief states that "insurance intermediaries supplying services outside the UK can rely on direct effect of EU law to recover relevant input tax incurred prior to 1 January 2024, whether the insured party is in the UK or not." The Brief also makes it clear that HMRC's policy is that the Offshore Looping Regulations are effective to prevent VAT recovery from 1 January 2024 for insurance intermediary services where the final consumer (the insured party) belongs in the UK. This is on the basis that the effect of the Retained EU Law (Revocation and Reform) Act 2023 is that businesses will no longer be able to rely on the direct effect of EU law. In the words of the Brief: "Section 28, Finance Act 2024 means that UK VAT and excise legislation will continue to be interpreted in the same way as it was before 1 January 2024, with the exception that businesses will no longer be able to rely on the 'direct effect' of EU law. It is no longer possible for any part of UK legislation to be quashed or disapplied on the basis that it is incompatible with EU law, as UK law is now supreme."

Global mobility: tax implications

Global mobility provides opportunities for business and flexibility for individuals including through remote and cross-border working but also brings tax challenges and uncertainty about the tax implications for the business and for the individuals. Identifying and addressing such tax challenges has been behind two recent developments.

First, the 2025 Update to the OECD Model Tax Convention released on 19 November 2025 included changes to the Commentary on paragraph 1 of Article 5 (fixed place of business creating a permanent establishment (PE)) which clarify when an individual's home (or other relevant place) will or will not constitute a "place of business" of the enterprise for which the individual works. The Commentary now sets out a number of "relevant, but not exhaustive" considerations in approaching the fact-specific question of whether there is a fixed place of business PE. If an individual works from home less than 50% of their total working time for that enterprise over a 12-month period, there should not be a PE and the inquiry seems to end there, with exceptions to this expected to be rare. The individual's actual conduct will prevail over formal contractual terms in determining the calculation of working time.

If the 50% working time threshold is exceeded, you have to look at further facts and circumstances. The key question is whether "there is a commercial reason for the activities to be undertaken by that individual in the Contracting State where the home… is located".

Where there is no such commercial reason, that place would not be a fixed place of business PE "unless other facts and circumstances indicated otherwise". Where the flexibility to work from home (WFH) is offered solely to obtain or retain that individual's services or if the WFH policy is driven by cost-cutting by reducing spend on office space, the Commentary provides that the WFH will be for that purpose and not because there is a commercial reason. As the indicators are now more fact-sensitive, a careful reading of the revised Commentary is required before applying it to the facts to determine whether a fixed place of business PE has been created by WFH in a different jurisdiction to the employing enterprise.

Second, the Inclusive Framework published a consultation document on 26 November 2025 on the possible issues that can arise from the global mobility of individuals. The closing date for responses was 22 December 2025, followed by a public consultation meeting on 20 January 2026. The consultation looks primarily at tax issues related to personal income tax and employment income but corporate income tax challenges are also of interest, such as issues relating to the existence of a PE, when and how profits should be attributed to such a PE, residence and transfer pricing. The consultation document notes that there may be cases where global mobility opportunities are not pursued, or are constrained, because of uncertainty about the application of the tax rules and the administration and compliance burdens. It is helpful that these tax issues are being considered by the Inclusive Framework and that input from stakeholders is being sought. It is hoped that some practical solutions will be found sooner rather than later to resolve the uncertainty and enable individuals and businesses to fully embrace global mobility opportunities.

GfC16: imported hybrid mismatches

Continuing the series of guidelines for compliance to provide greater clarity and transparency of tax compliance obligations, GfC16 is intended to help multinational enterprises (MNEs) reduce uncertainty in their imported hybrid mismatch compliance. It sets out HMRC's approaches to risk assessment across a range of structures, arrangements and transactions typically seen by MNEs and details the evidence HMRC expects MNEs to retain.

GfC16 follows TIOPA 2010, Part 6A, Chapter 11 ("Imported Mismatches") and supplements the guidance in HMRC's International Manual at INTM559000. As with other forms of HMRC guidance, these guidelines form part of HMRC's "known position" for large taxpayers within the scope of the uncertain tax treatment notification rules. Chapter 11 requires counteraction to be disclosed in the corporation tax self-assessment to prevent all or part of the UK deduction where a hybrid mismatch arises in another jurisdiction. Part 5 of the guidelines provides best practice recommendations for disclosing a counteraction.

As the imported hybrid mismatch analysis is a question of fact based on key information (such as details of the corporate structure, intra-group transactional relationships and entity-level tax positions) which HMRC understand can, in some cases, be complex, HMRC expect there will be some MNEs who, in light of studying the recommendations in GfC16, may realise they have not been applying the imported hybrid mismatch rules correctly. Part 7 of the guidelines explains how errors can be corrected depending on whether or not the taxpayer is within time for amendment of the return.

What to look out for:

- To preserve the benefit of a clearance granted under TCGA 1992 s 138 before 26 November 2025 (Budget Day), the share issue must occur before 26 January 2026. For clearance applications received before Budget Day but granted on or after Budget Day, the share issue must occur within 60 days of the clearance date in order for the current rules to apply.
- On 3 or 4 February, the Court of Appeal is scheduled to hear the appeal in *Muller UK & Ireland Group v HMRC* on the interaction of the related parties rule in the intangible fixed asset regime with the rules for taxing corporate partners in a partnership.
- On 3 and 4 February, the Supreme Court is scheduled to hear the appeal in *Orsted West of Duddon Sands v HMRC* (formerly Gunfleet Sands) on the availability of capital allowances for pre-development expenditure.
- The Upper Tribunal is scheduled to hear the appeal in *Barclays Services Corp and Execution Services v HMRC* (VAT grouping) case in early March.

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