TC02016

Appeal number: TC/2010/00013

VAT – input tax – invoices rendered to another company but paid by Appellant – whether VAT paid by Appellant constituted input tax – held, on facts, no – services neither supplied to Appellant nor used by Appellant for purpose of its business despite commercial justification for payment of invoices – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

CHAIN TELECOMMUNICATIONS LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE JOHN CLARK
MICHAEL BELL ACA, CTA

Sitting in public at 45 Bedford Square London WC1B 3DN on 5 March 2012

Jeremy Tann, Director, and Hugh Craen, Consultant, Business and Finalcial Solutions, for the Appellant

Jonathan Bremner of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant ("Chain") appeals against an assessment dated 8 October 2009 disallowing input tax in the sum of £7,706 claimed by Chain in respect of VAT period 04/09.

The facts

2. The evidence consisted of a bundle of documents. In addition, Mr Tann (known as Jay Tann) gave answers to questions put informally by Mr Bremner; these were not given under oath, but we agreed that this information should be treated as evidence. From the evidence we find the following background facts.

3. Chain purchased the business and assets of a company called Globalink International plc ("plc") from its administrators in August 2008. There was limited evidence to indicate the history of the transfer and the way in which plc had itself either acquired or set up the business. No copy of the sale agreement was included in the evidence. The other company involved was Globalink Telecommunications International Ltd ("GTI"). Chain's registration for VAT had been a new registration, not on the basis of transfer of business as a going concern. Mr Tann, who had previously been hired by a Globalink company, had set up Chain to take up the operations of the Globalink business, as a continuation of that business. Chain had been incorporated on 4 August 2008. Mr Tann owned the shares in Chain, and was a director; two other directors had recently been appointed.

4. As shown by a report dated 21 August 2009 by the Administrators of plc, plc was put into administration on 27 July 2008; the Administrators referred to having done so in their capacity as Joint Administrators of GTI. That report does not establish the date on which they were appointed in the latter capacity, but we find that it must have preceded their appointment as Administrators of plc. Globalink was therefore already in administration as at 27 July 2008. Mr Tann's understanding was that it would have commenced in November 2007. (We note that the Administrators' "Notice of statement of affairs" dated 10 November 2008 relating to plc refers to the date of administration of plc as being the slightly earlier date of 25 July 2008, but we do not consider that this affects the position.)

5. The 2009 report stated that the business and assets of "the Company" (defined as "Globalink International plc") were sold to Chain for the total sum of £30,000. Completion of the sale had been on 11 August 2008 and a payment of £15,000 had been made at that time. A further payment of £15,000 had been deferred, to be paid on or before 31 October 2008. The report confirmed that the Administrator had received the deferred consideration, but did not specify the date of receipt.

6. The corporate structure of the Globalink companies is not entirely clear from the evidence. The position as understood by Mr Tann was that plc owned the shares in GTI, which had been the trading company subsidiary. He explained that the reason for setting up plc had been for the purposes of a flotation, which had never happened. Its

shares were owned by a number of individual shareholders. Mr Fenwick was the majority shareholder. Mr Tann described plc as a non-trading dormant company.

7. If it is correct that plc owned all the shares in GTI, there is no explanation why (as shown by the 2009 report relating to plc) the Administrators of GTI in that capacity made an application for the appointment of an Administrator of plc. It is possible that plc may have guaranteed the indebtedness of GTI, but in the absence of further evidence, we are unable to make any findings. Further, if plc was a non-trading company, the reason for its Administrators being in a position to sell its business and assets to Chain is far from clear. A possible explanation referred to in the questions put by Mr Bremner to Mr Tann was that plc might have taken over the trade of GTI from November 2007 until the administration in 2008. In the absence of further evidence, we are unable to make findings as to these questions.

8. Mr Tann referred to a continuing loan in respect of an amount borrowed to pay HMRC outstanding PAYE of almost £23,000, as shown in the Administrators' report in August 2009 concerning plc. That loan was to be repaid on the day of the hearing; we assume (without specific evidence) that Chain had assumed the PAYE liability as part of the acquisition of the business from plc. There was no mention of this in the Administrators' report, but Mr Tann and Mr Craen both indicated that the arrangement to assume liabilities had been a separate one made without the Administrators' knowledge, in order to ensure the retention of suppliers for the continuation of the business. Mr Tann and Mr Craen confirmed that there was a separate commission arrangement between Chain and the suppliers.

9. It is also unclear whether the only transaction into which Chain entered was its purchase of the business and assets of plc, or whether there was any additional transaction. Chain's accounts for the period from 4 August 2008 to 31 March 2009 show acquisition of goodwill at a cost of £191,793, with a 100 per cent amortisation charge for the period and a net book value of nil at 31 March 2009. That goodwill acquisition cost was far in excess of the purchase costs from plc as mentioned in the report of the Administrators of plc.

10. Whatever the precise details of Chain's purchase (or purchases), before the time of the purchase three different firms of solicitors had raised invoices against Globalink companies for the supply of various legal services between November 2007 and July 2008. The details of these invoices were as follows:

No.	Date	Supplier	Total amount	VAT
1	18 October 2007	PDT Solicitors	£6,203.63	£889.88
2	2 November 2007	PDT Solicitors	£6,193.75	£1,095.13
3	30 March 2008	Stevens & Bolton LLP	£24,844.79	£3,700.29
4	31 March 2008	Stevens & Bolton LLP	£936.48	£139.48
5	10 July 2008	Rawlison Butler LLP	£9,531.56	£1,668.03
6	15 July 2008	Rawlison Butler LLP	£1,431.39	£213.19
Total VAT				**£7,706**

11. The second invoice from PDT solicitors referred to £4,112.50 having already been paid on account. The first invoice from Rawlison Butler referred to £8,000 having been received on account.

12. The invoices from PDT Solicitors were addressed to Globalink Telecommunications International Ltd, the subject matter being "Re: Gamma Telecom Limited". The invoices from Stevens & Bolton LLP were addressed to Kim and Ian Fenwick at plc, the subject matter specified being "Globalink Telecommunications Limited". The invoices from Rawlison Butler LLP were addressed to plc, the subject matter being "Administration Application". (Mr Tann had made certain annotations on some of the invoices; we consider these below.)

13. The invoices set out in the table above were paid in full by Chain, including the VAT charged by the three legal firms. An extract from Chain's Sage accounts for the period from 1 August 2008 to 31 March 2009 headed "Nominal Activity" showed payment of the invoiced sums net of VAT. We find that this accounting approach was based on the assumption that the amounts paid in respect of VAT on the invoices would be deductible in computing Chain's output tax.

14. Chain completed a VAT return for the period 04/09. In this return (of which no copy was included in the evidence), a net repayment of £1,555.40 was claimed. This claim included by way of input tax deduction the £7,706 paid in respect of the invoices detailed above. The return was signed by Mr Tann.

15. On 16 September 2009 Alison Pelling, an officer of HMRC, visited Chain's business premises to carry out a pre-arranged VAT audit. She discussed the business generally with Mr Tann. He drew her attention to the invoices. He explained that when Chain had purchased the business, the "Globalink" assets and goodwill had also been transferred. The Directors of Chain had therefore paid the invoices. Requests had been made to the firms supplying the legal services to re-issue the invoices and address them to Chain, but they had refused to do so on the basis that the contract for the winding-up settlement had been with Globalink and not with Chain.

16. Alison Pelling told Mr Tann that because the invoices were for supplies to a third party, she would disallow the input tax relating to them.

17. In a subsequent email exchange between Ian Fenwick (the former Director of plc) and Alison Pelling between 16 September 2009 and 2 October 2009, Alison Pelling referred to the request for a copy of the sale agreement between the Administrators and Chain for the purchase of Globalink. She stated that if the sale agreement stated categorically that the supply had been made to Chain and not to plc, then that should be the end of the matter. As she had explained to Mr Fleming, the question came down to who the supply was made out to.

18. In her email dated 1 October 2009, Alison Pelling told Mr Fenwick that she had consulted with colleagues, and that she remained of the view that the claim for input tax relating to the invoices should be disallowed. Both the colleagues consulted were

of the opinion that the supply had clearly been made to GTI [*sic*] and not to Chain. She commented:

> "If you look at the invoices they are showing the *supply* is made to Globalink for the winding up of the company, regardless of who actually pays the fees or who purchased the assets and goodwill of the company in administration."

19. A penalty would not, however, be imposed , because Chain had been proactive in seeking advice from both the HMRC National Advice Service and Chain's accountant before making the claim.

20. On 8 October 2009 Alison Pelling raised an assessment for VAT plus interest of £65.94, and in a letter of the same date notified Chain of the assessment.

21. On 3 January 2010, Chain was successful in its second attempt to give Notice of Appeal to the Tribunal, as its initial form dated 3 November 2009 had not included a request for an extension of time. (It is not clear to us, from the information which we have, why this would have been necessary; there is no indication of the date on which the original form was received by the Tribunals Service.) As the Notice of Appeal had been lodged, HMRC did not carry out any departmental review.

22. In email exchanges during April and May 2011 between Mr Craen and the three firms which had supplied the services, each firm confirmed that it had accounted for output tax in its relevant VAT returns.

Arguments for Chain

23. The grounds of appeal set out in Chain's Notice of Appeal were as follows (subject to minor editorial corrections):

> "Chain Telecom purchased Globalink Telecom from the administrators in August 2008, to secure the future of the company's success Chain had to pay several law firms for invoices raised to Globalink as the Directors were personally responsible for the debts.
>
> Chain are paying the invoices which include the VAT, I also confirm the VAT was not claimed by Globalink prior to the administration. We have requested the law firms [to] re-invoice Chain but they refused as the debt is secured by the directors of Globalink and they wish to novate the responsibility of the debt.
>
> We were always aware that this is a grey area so we contacted the VAT advice service prior to submitting the claim for VAT, we also made the company's auditors aware of the situation and the advice from both parties was to claim the VAT. We then had an inspection from an Officer of [HMRC] Alison Pelling, we brought this to her attention and provided her with all information, she was satisfied we had taken due care in claiming the VAT. Although she disallowed the input tax claim, she advised us of our right to appeal (re letter 8 October).

> Our appeal is based on the fact Chain are paying the VAT and I assume the law firms are claiming the input tax on their VAT returns, therefore with the professional advice we have taken it appears correct for us to claim the input tax."

24. Mr Tann maintained that the continuation of the business demonstrated that there was a continuation of the supply to Chain. Most of the companies mentioned in the precedents referred to in HMRC's skeleton argument had not been supplied by the supplier of a third party. In Chain's case, he submitted that the solicitors had been supplying services to Chain for the continuation of the business. Following the new VAT registration, there had been a continuation into Chain carrying out the business. He conceded that perhaps some of the supplies had been for the "Globalink" business and some for Chain; he would like this to be considered if Chain's appeal was completely dismissed.

25. The solicitors had accounted for output tax on their supplies. The supplies had only been used for business purposes. A proportion should be allowed to Chain on the continuation. He thought that the solicitors should probably have submitted more than one invoice, but the invoicing had been based on the way in which their files had been opened.

26. It had been stated in HMRC's skeleton argument that Chain had not obtained any benefit from the services supplied. Mr Tann submitted that Chain had been able to benefit, as it had been able to survive for the first six months from it having been set up, and was still surviving.

27. Mr Tann acknowledged that he did not have the expertise of a professional adviser such as Mr Bremner. He emphasised that he approached matters as a layman, seeking to survive on cash flow. In relation to the submissions relating to *Customs and Excise Commissioners v Redrow Group plc* [1999] STC 161 (HL), if Chain had not accepted liability to pay for the services which had been supplied, Chain would not have continued to exist; the question was quite "black and white". The payments had been made to protect the asset of Chain's day to day business. In particular, Gamma Telecoms Ltd had been hostile, and it had taken a significant amount of money to deal with the dispute. He submitted that the payments made in respect of the invoices had not resulted in such a loose benefit as HMRC were contending.

Arguments for HMRC

28. Mr Bremner referred to s 24(1) of the Value Added Tax Act 1994 ("VATA 1994"):

> "(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say—
>
> (a) VAT on the supply to him of any goods or services;
>
> (b) VAT on the acquisition by him from another member State of any goods; and

(c) VAT paid or payable by him on the importation of any goods from a place outside the member States,

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him."

29. He also referred to ss 25 and 26 VATA 1994. The latter provided:

"**26 Input tax allowable under section 25**

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

(a) taxable supplies;

(b) . . .

(c) . . ."

30. He stressed the key principle following from the words of s 24(1) VATA 1994; VAT must be on the supply to the taxable person. Where a payment was "third party consideration", the VAT paid by that person was not in his hands input tax in the relevant sense.

31. He referred to various passages in *Redrow*, and to comments by Neuberger LJ in *WHA Ltd and another v Customs and Excise Commissioners* [2004] STC 1081 (CA). Mr Bremner explained that the approach in these cases was currently the subject of a challenge by HMRC. The application of the judgment of the ECJ in *Revenue and Customs Commissioners v Loyalty Management UK Ltd; Baxi Group Ltd v Revenue and Customs Commissioners* [2010] STC 2651 was due to be considered by the Supreme Court in October 2012. Further, the approach set out in *Redrow* was to be the subject of argument in *WHA*, which was to be heard by the Supreme Court in January 2013. HMRC had permission to join in the appeal from the judgment of the Court of Appeal given by Neuberger LJ in the first of the *WHA* cases.

32. Mr Bremner submitted that, whatever the position in relation to *Redrow*, Chain's appeal could not succeed.

33. He referred to two Tribunal decisions. In *DIY Conservatory Centre v Revenue and Customs Commissioners* (2005) VAT Decision 19290, which had similarities to the present case, the Tribunal had examined four questions derived from the Redrow case. He stressed the comments of the Tribunal at paragraph 12 of its decision.

34. The second case was *ASR Consultants Ltd v Commissioners of Customs and Excise* (2004) VAT Decision 18600. The Tribunal had concluded that there was no supply to the appellant, ASR. ASR had paid two outstanding debts which were owed

by another company (IWW) to its supplier (U-Net) and claimed the VAT in respect of such debts as input tax. At paragraph 12 the Tribunal commented:

> "In my view the Vat paid to U-Net was not Vat on the supply to the Appellant of any goods or services used or to be used for the purposes of a business carried on by the Appellant. The payment was merely payment of Vat already owed by IWW to U-Net in respect of services it had provided to IWW."

35. The four questions put in *DIY Conservatory* were set out at paragraph 7 of that decision:

> ". . . Mr Ferrington argued that, in *Redrow*, the Court posed four questions for a person claiming to deduct input VAT, namely:
>
> (i) Did that person instruct the supplier to do something?
>
> (ii) Was something done for or obtained by that person?
>
> (iii) Did that person use that something in the course of [sic] furtherance of its business?
>
> (iv) Did that person pay consideration for the something which included VAT?"

36. Applying these tests, Mr Bremner commented:

(1) The solicitors had been instructed by plc; Chain had not yet been incorporated at that stage. The invoices had been nothing to do with Chain.

(2) Nothing was done for Chain. The services were for GTI and plc, as Chain had not yet been incorporated. The services had been provided between 18 October 2007 and July 2008; Chain was incorporated on 4 August 2008, as shown by the Director's Report included in its unaudited financial statements for the period from that date to 31 March 2009. There could have been no question of Chain authorising the work done by the three firms of solicitors, or of the work being done for it.

(3) None of the services were used by Chain. It could be said that payment of the invoices enabled Chain to trade, but Mr Bremner submitted that this was not enough for input tax recovery. It was a non sequitur to say that the payments of the invoices had been made in order to secure the future of Chain. In a loose sense it did assist Chain's position, but this was confusing the position of the former plc directors in their personal capacities.

(4) Chain had made the payments. Even if it were possible to conclude that the supplies had been made to Chain – which, for the reasons given, was not possible on the evidence and for the reasons given – there was no basis for concluding that the supplies were used or to be used for the purposes of any business carried on by Chain as required by s 24(1) VATA 1994. The payments appeared to have been made by Chain in order to discharge liabilities owed by the directors of plc in their personal capacities, as referred to in Chain's grounds of appeal. It was clear that payment by Chain would result in good relationships with the firms concerned, but Chain had not existed at the time when the

services had been provided. Mere payment of the invoices was not enough, nor reflection of Chain's payments in its accounts. Nor was the position affected by the solicitors having accounted for output tax on the supplies which they had made.

37. The result of the invoicing was that Chain did not hold the relevant VAT invoices, as referred to in Regulation 29(2)(a) of the Value Added Tax Regulations 1995.

38. In Chain's second ground of appeal, it had referred to requesting the firms to re-invoice Chain. Mr Bremner commented that there had been no such re-invoicing. Even if this were to have been done, this would not have altered the position, as the basis on which the services had been provided would not have changed. He referred to *Realm Defence Industries* (2000) VAT Decision 16831 at paragraph 18-20, which showed that new invoicing made no difference to the VAT analysis.

39. Mr Bremner also made submissions on the question whether it was possible for the right to deduct to be transferred. This was not what had happened here, and in any event would not have affected Chain's right to deduct.

40. Such a transfer could be a transfer of an asset, as indicated in *Midlands Co-Operative Society v Revenue and Customs Commissioners* [2007] EWHC 1432 (Ch). HMRC's 2010 guidance on *Fleming* claims showed that a transfer was possible.

41. In Chain's case, there was no evidence whatsoever of any assignment. There was no evidence of transfers from GTI to plc, not any reference in the Progress Report of plc's Administrators. The position might have been different if all the assets had been transferred, or if there had been a reference to all claims being transferred.

42. On the facts, even if there had been an assignment, this would not in any event have been of assistance. Mr Bremner referred to s 133 of the Finance Act 2008 ("FA 2008"), introduced following the *Midland Co-Operative* case. He submitted that this section took the matter beyond doubt. HMRC were entitled to a set-off even in cases where there was a claim. Section 130(8) FA 2008, which said that the section was without prejudice to any other power of HMRC to set off amounts, meant that s 81 VATA 1994 applied. The amount owing from plc in respect of unpaid VAT had been £8,305. Section 131 FA 2008 did not preclude set-off, because the "insolvency event", ie the appointment of the Administrator[s] of plc, occurred on 25 July 2008, and all the supplies related to matters occurring at time before that, so did not give rise to any post-insolvency credit.

43. Thus even if the Tribunal were to be against HMRC on the evidence, HMRC were entitled to set off the outstanding VAT against the claim; the VAT debt exceeded the amount being claimed by way of input tax.

44. An additional point was that if there had been an assignment, by that time more than six months had passed since the dates of the invoices, so that s 26A VATA 1994 would have disallowed the right to deduct. That section did contain a right to reinstatement, but it did not fit a "third party" case.

45. Mr Bremner summarised the fundamental point of HMRC's case. The question was whether the supplies were made to Chain, following the questions in *DIY Conservatory*. The answer was that the supplies had been made to plc and not to Chain. This was an insurmountable obstacle to Chain's appeal. He submitted that the appeal should be dismissed.

Discussion and conclusions

46. As we have mentioned above, the evidence before us was limited. In particular, we did not have any copy of the agreement for the transfer of the business from plc to Chain, nor was it apparent whether the business previously carried on by GTI had been transferred to plc when GTI had been put into administration. The absence of the formal documentation means that we have to decide the case on the limited evidence available to us. In this respect, the position is similar to that in the *ASR* case.

47. We are satisfied on the evidence that Chain paid the full amount of all six invoices, including the VAT. As Mr Bremner submitted, the fundamental question is whether Chain fulfilled the conditions laid down by s 24(1) VATA 1994 in order to treat the VAT paid as input tax, namely that the supplies of services were made to Chain within s 24(1)(a), and that the services were

> ". . . used or to be used for the purpose of any business carried on or to be carried on by him [ie Chain]."

48. We acknowledge the comments which Mr Bremner made concerning *Redrow* and the further issues to be considered by the Supreme Court later this year and in 2013 in the respective cases of *Loyalty Management* and *WHA*. Pending the future judgments of the Supreme Court, we continue to be bound by *Redrow*, whatever challenges HMRC may wish to pursue in those other proceedings.

49. In *Redrow*, Lord Hope commented at p 165 g-h:

> "The question then is whether there is a direct and immediate link with an exempt supply or with a supply which is not taxable. Where, as in this case, all the supplies which the taxable person makes in the course or furtherance of its business are taxable supplies, the only question which has to be addressed is whether the supplies on which it seeks to deduct input tax have been used or are to be used for the purposes of the business. The relevant test is that laid down in *Belgium v Ghent Coal Terminal NV* (Case C-37/95) [1998] STC 260, [1998] ECR I-1. Was the supply received in connection with the business activities of the taxable person, for the purpose of being incorporated within its economic activities?"

50. At p 166 he said:

> "Questions such as who benefits from the service or who is the consumer of it are not helpful. The answers are likely to differ according to the interest which various people may have in the transaction. The matter has to be looked at from the standpoint of the person who is claiming the deduction by way of input tax. Was

> something being done for him for which, in the course or furtherance of a business carried on by him, he has had to pay a consideration which has attracted VAT? The fact that someone else, in this case, the prospective purchaser, also received a service as part of the same transaction does not deprive the person who instructed the service and who has had to pay for it of the benefit of the deduction."

51. Lord Millet expressed a similar view at p 171:

> "Once the taxpayer has identified the payment the question to be asked is: did he obtain anything—anything at all—used or to be used for the purposes of his business in return for that payment? This will normally consist of the supply of goods or services to the taxpayer. But it may equally well consist of the right to have goods delivered or services rendered to a third party. The grant of such a right is itself a supply of services."

52. Following the approach of Neuberger LJ in *WHA* at [46] and that of Lord Hope in *Redrow*, was anything "done for" Chain by the solicitors in the present case? Did Chain obtain anything used or to be used for the purposes of its business in return for its payment of the invoices? It is clear on the evidence that Chain was not in existence when any of the services were provided. This renders it unlikely that anything was "done for" Chain. Further, the nature of the services must be considered.

53. In analysing the position, we bear in mind the four questions derived from *Redrow* and considered by the Tribunal in *DIY Conservatory*, as set out above.

54. The first invoice from PDT Solicitors, covering the period from 26 September 2007 to 18 October 2007, concerned resisting a winding-up petition; the "matter heading" on the invoice was "RE: HM Revenue & Customs". Ignoring for the present the annotations made by Mr Tann, the addressee was GTI.

55. The matter heading on the second invoice from PDT Solicitors was "Re: Gamma Telecom Limited". This concerned an application for injunctive relief. The invoice covered the period from 19 to 21 November 2007. This invoice was also addressed to GTI.

56. The third invoice (which was the first from Stevens & Bolton LLP) was addressed to Kim and Ian Fenwick at plc. It covered the period to 30 November 2007; the commencement date was not specified. It was headed "Globalink Telecommunications Limited", and covered two matters. The first was "Advice on purchase agreement". The second, to which the main bulk of the charges related, was "Advice on dispute with Gamma Telecoms Limited".

57. The fourth invoice (being the second from Stevens & Bolton LLP) carried the same address and heading as their previous invoice. It covered the period from 1 to 31 December 2007, and the narrative was; "To our professional services in connection with the above-mentioned matter".

58. The fifth invoice (the first from Rawlison Butler LLP) was addressed to plc and covered charges for the period 1 to 8 July 2008. The heading was "Administration

Application". It referred to "attached narrative"; no narrative was included in the evidence.

59. The sixth invoice (and the second from Rawlison Butler LLP) was similarly addressed and headed. It specified the charges as a final bill for the period to14 July 2008. It also referred to attached narrative; none was attached to the copy in the bundle.

60. Leaving aside the question of the identity of the particular companies mentioned in these invoices, we are not satisfied on the evidence of the nature of the services supplied that there is any possibility of those services being regarded as provided to, or "done for", Chain. Not only was Chain not in existence until August 2008, after the performance of the work covered by the latest of the invoices; the services related to matters which were specifically related to companies other than Chain.

61. Thus the answer to the question, under s 24(1)(a) VATA 1994 (whether the services were supplied to Chain) is that they were not. Failure of that precondition means that the VAT paid by Chain as part of its payment of the invoices does not constitute input tax, and is sufficient to determine the result of Chain's appeal. However, we go on to consider whether Chain met the remaining condition in s 24(1) VATA 1994; were the services used or to be used for the purpose of any business carried on or to be carried on by Chain?

62. Again, we do not think that the services relating to the other companies can possibly be described as having been used by Chain for the purpose of its business. The further condition in s 24(1) VATA 1994 is therefore not fulfilled, so that if for any reason our finding in the previous paragraph were to be considered incorrect, Chain's claim for input tax deduction would still fail.

63. We accept Mr Tann's evidence that for Chain to be able to carry on the business previously carried on by plc (and by GTI, if it is correct that GTI's business was ultimately transferred to Chain, however this was achieved), Chain felt it necessary to pay the invoices. The commercial logic for doing so is entirely understandable. However, the commercial justification is not in itself a basis for satisfying the requirements of s 24(1) VATA 1994 and the associated sections and applicable Regulations. Chain may be described as having benefited from accepting the liability to pay the invoices, but this is not the same as using the solicitors' services for the purposes of its business.

64. In respect of the four questions as put in *DIY Conservatory*, we therefore agree with Mr Bremner's comments as set out above.

65. In summary, we find that the services of the solicitors were not supplied to Chain, and that Chain did not use those services for the purpose of its business.

66. We have referred to the annotations made by Mr Tann on nearly all the invoices. He explained at the hearing that he had made the annotations during the meeting with Alison Pelling, except for the alteration of the tax point on the third invoice. The latter had been written in as March before the meeting with Alison Pelling, as it had been received at the end of March.

67. We are satisfied that there was no intention on Mr Tann's part to mislead HMRC by these annotations; it is entirely clear from the copies in evidence that they were rendered as indicated by the original typescript. In any event, we have found that the invoices do not enable Chain to claim the VAT element of the invoice payments as input tax, and thus the annotations have been shown to be irrelevant.

68. On the basis of our findings of fact and our conclusions as to the applicable law, we agree with Mr Bremner's submission that the position would not have been affected if the three firms had rendered new invoices against Chain; it would still have been unable to treat the VAT paid on the replacement invoices as input tax. The position is clear from the decision of the Tribunal in *Realm Defence Industries Ltd*.

69. As noted above, Mr Bremner made submissions concerning the issue of transferring the right to deduct. As there is no evidence of any such transfer in Chain's case, and as our findings are in accordance with Mr Bremner's case as presented on behalf of HMRC, we do not find it necessary to consider in any further detail these interesting submissions in order to arrive at our conclusions as to the result of Chain's appeal.

70. As the payments by Chain do not meet the conditions set out in s 24(1) VATA 1994, we find that its payments in respect of VAT on the six invoices do not constitute input tax. Its appeal must therefore be dismissed. We find no grounds on which any part of that VAT can be regarded as input tax in Chain's hands, and therefore there is no basis for any revised attribution as suggested by Mr Tann in the course of his argument before us.

Right to apply for permission to appeal

71. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN CLARK
TRIBUNAL JUDGE

RELEASE DATE: 8 May 2012