[2016] UKFTT 0495 (TC)

TC05245

Appeal number:TC/2015/00581

VAT – input tax credit – legal services in connection with civil proceedings – whether supplied to the taxable person – whether direct and immediate link to taxable activities – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PRAESTO CONSULTING UK LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN
MR MICHAEL ATKINSON

Sitting in public in Manchester on 12 February 2016

Mr Nigel Gibbon of Nigel Gibbon & Co for the Appellant

Mrs Lisa Fletcher of HM Revenue & Customs for the Respondents

DECISION

Background

1. The Appellant ("Praesto") paid legal fees relating to the defence of civil proceedings brought by Customer Systems plc against Mr Jeremy Ranson, a director of Praesto. The issue on this appeal is whether Praesto is entitled to credit for input tax on VAT charged by the solicitors acting in relation to those proceedings.

2. Praesto claimed input tax credit totalling £79,932 in its VAT returns for periods 03/11 to 02/13. On 14 July 2014 the Respondents issued a notice of assessment in that sum in order to recover the input tax claimed. It is that assessment which is the subject of this appeal.

3. The basis of the assessment was the Respondents' conclusion that the legal fees were not incurred by Praesto for the purposes of its business. That conclusion was supported by Mrs Fletcher who appeared on behalf of the Respondents. Mr Gibbon, who appeared for Praesto, contends that the conclusion was wrong and that the legal fees were incurred by Praesto for the purposes of its business.

4. The Respondents also assessed penalties against Praesto for careless inaccuracies in its returns. The penalties were in any event suspended and are not the subject of this appeal, save that if this appeal succeeds then the penalties would inevitably fall away completely.

5. We heard evidence from Mr Ranson on behalf of Praesto. Based on the evidence of Mr Ranson and the documentary evidence before us we make the following findings of fact.

Findings of Fact

6. Mr Ranson was formerly an employee of Customer Systems plc ("CSP"), together with Mr David Atherton, Mr Mark Edmond and Mr Patrick Offland. CSP was an information technology consultancy which specialised in supplying services connected with "customer relationship management" software to large corporations. Mr Ranson rose to be a divisional manager with CSP. In 2009 he was offered a role as head of UK operations, but instead he resigned to set up Praesto. Thereafter Praesto carried on a consultancy business competing with CSP. Mr Ranson was the sole director of Praesto. Mr Atherton, Mr Edmond and Mr Offland became employees of Praesto.

7. On 4 November 2009 McGrigors, solicitors acting for CSP, wrote a letter before action to Mr Ranson. Mr Ranson was identified as the proposed defendant. It alleged that Mr Ranson had breached his contract of employment by removing confidential information, had breached fiduciary duties and duties of fidelity owed to CSP and had made defamatory comments about CSP. The letter referred to the fact that Praesto was by then a direct competitor of CSP and had started to do business with some major clients and prospective clients of CSP. The letter also referred to the possibility of "*further matters warranting claims against you and/or against Praesto and/or against*

its officers and employees for damages …". The relief sought from Mr Ranson by CSP included an admission of liability to damages and the provision of various lists of Praesto's employees, customers and prospective customers.

8. On 6 November 2009 McGrigors wrote a letter before action to Praesto, who was identified as the proposed defendant. It was alleged that Praesto had made defamatory comments about CSP and had induced employees of CSP to breach restrictive covenants in their contracts of employment. The relief sought against Praesto in the proposed proceedings included the return of confidential information, damages or equitable compensation for misuse of confidential information and damages for defamation.

9. Mr Ranson and Praesto instructed Sintons, solicitors. On 13 November 2009 Sintons replied to the letters before action. They identified their clients as Mr Ranson and Praesto and the claims being made by CSP were denied. McGrigors responded on 19 November 2009 maintaining the claims that had been made. Further solicitors' correspondence followed until 4 January 2010 in which claims were being made and refuted in relation to both Mr Ranson and Praesto. At one stage it was suggested by McGrigors that there may be a split trial on liability and quantum. There were also without prejudice meetings and negotiations between Mr Ranson and CSP where it was acknowledged that Mr Ranson was negotiating on behalf of himself and Praesto.

10. In early 2010 there was an unsuccessful mediation. Proceedings were then commenced by CSP on 4 May 2010. In the event CSP commenced proceedings only against Mr Ranson and the three other individuals who had left CSP to join Praesto. The Amended Particulars of Claim alleged that Mr Ranson had breached his terms of employment and/or fiduciary duties in setting up Praesto and competing with CSP through Praesto. Further claims were made alleging misuse of a contact list. CSP claimed damages by reference to the value of the business lost by CSP. This was estimated by reference to work done by Praesto. In the alternative CSP sought an account of profits earned by Mr Ranson in breach of his fiduciary duties.

11. In the course of the proceedings CSP requested further information and specific disclosure from Mr Ranson of gross revenues and profits derived by Praesto in relation to various major clients. That material was said to be relevant in assessing the loss and damage suffered by CSP.

12. The claim went to trial before Sir Raymond Jack sitting as a Judge of the High Court over 9 days in November 2011. This was a trial in relation to liability only. If necessary the amount of any damages or any account of profits was to be decided subsequently. Mr Ranson was represented by leading and junior counsel. Mr Atherton had settled before trial. The other employees were each separately represented. In the event judgment went in favour of CSP.

13. The judge referred to the position of Praesto at [19] of his judgment as follows:

> "*19. As I have said, I am concerned only with liability, namely questions of breach of duty. I am not concerned with what CS might have done if it had been*

aware of Praesto. There is a question whether Mr Ranson may be liable personally to account for the profits made by Praesto. Praesto is not at present a party to the action, although Mr Griffiths stated that CS might apply to join Praesto following the judgment on liability. It is agreed that I am not concerned with the issues as to Mr Ranson's personal liability at this stage."

14. We also had the benefit of extracts from the transcript of the hearing. It is clear from the transcript of the opening that the judge had some concern about a split trial in relation to breach of fiduciary duty, without being required to say whether any breach gave rise to a right to an account of profits, and if so what profits. Leading counsel for CSP said in response:

"*Can I come back to that? Because there is an additional problem in that respect which my learned friend raises in his skeleton about the position of Praesto … "*

15. Later in opening counsel for CSP came back to the ambit of the trial, in the context of a discussion about who would be liable for an account of profits, Mr Ranson or Praesto. It is apparent from the transcript that Mr Ranson's counsel in his skeleton argument had said that "*the fact that Praesto was not a party may lead to some interesting questions should it ever be necessary to take an account of profits against Mr Ranson rather than the company*". It seems that Mr Ranson was taking a point that the correct party for an account of profits would be Praesto and not Mr Ranson. This was described as "*a very difficult and important question*". During the course of discussion counsel for CSP said:

"*…if Your Lordship finds that there is a fiduciary duty and that there has been a breach of fiduciary duty, then the question about the account of profits will also include who should be liable for that account. And I don't propose to join Praesto as a party to this trial on the basis of the agreement that's been reached about the ambit of this trial and notwithstanding the footnote in my learned friend's opening.*

But I am likely to respond to this point by joining Praesto if Your Lordship's judgment is that there was a fiduciary duty and a breach of that duty. And that would mean that issues not only about the taking of the account, but who it should be taken from and if it should be Praesto…would be conveniently dealt with in that trial."

16. Later in the discussion counsel for CSP canvassed an alternative approach of joining Praesto there and then. In the end it appears from the closing submissions that the position of Praesto was left to be decided in any trial on quantum or remedy. In the events which happened a second trial was not necessary because Mr Ranson appealed to the Court of Appeal and his appeal was allowed. CSP sought but were refused permission to appeal to the Supreme Court.

17. To complete the picture, the claim against Mr Edmond was dismissed by the High Court and CSP did not appeal. The claim against Mr Offland was successful before the High Court but Mr Offland did not appeal.

18. Mr Ranson's evidence was that he understood throughout that CSP was "attacking" both himself and Praesto. CSP were effectively seeking to put Praesto out of business. His instructions to Sintons throughout the litigation were on behalf of himself and Praesto. Almost all the vast amount of documentation which was disclosed for the purposes of the proceedings was Praesto's documentation. We did not have a copy of any engagement letter issued by Sintons but we accept Mr Ranson's evidence.

19. We have no doubt that if CSP had been successful in establishing a breach of fiduciary duty by Mr Ranson then CSP would have sought to add Praesto as a party for the purposes of an account of profits. An award of damages against Mr Ranson personally would have led to his bankruptcy because he would not have been in a position financially to meet any such award. The real value of CSP's claim was an account of profits against Praesto, although the reality was that Praesto's profits had been invested in defending the proceedings, in other words paying Sintons' fees and disbursements. It may be that CSP were as interested in putting Mr Ranson and Praesto out of business as they were in obtaining damages or an account of profits. Whilst they did not seek injunctive relief, we are satisfied that if CSP's claim had been successful then Praesto would have been unable to continue trading.

20. Sintons issued the following invoices for their fees in connection with the litigation:

Invoice Date	**Addressee**	**Net Amount £**	**VAT £**
4 May 2010	Praesto	20,657	3,599
31 Jan 2011	Mr Ranson	12,250	2,450
31 Jan 2011	Mr Ranson	18,250	3,193
27 Sept 2011	Mr Ranson	57,051	11,410
20 Dec 2011	Mr Ranson	204,168	40,229
30 Apr 2012	Mr Ranson	44,035	8,658
19 July 2012	Mr Ranson	62,803	12,397
27 Nov 2012	Mr Ranson	7,384	1,445
24 Jan 2013	Mr Ranson	750	150

21. The first invoice was addressed to Praesto, and the Respondents have not challenged Praesto's claim for input tax credit on that invoice. It related to correspondence and advice in relation to the claim, including the mediation, and counsels' fees. It is dated 4 May 2010 and covered all costs up to and including the date when CSP commenced proceedings.

22. Praesto's claims for input tax credit on the other invoices, which were all addressed to Mr Ranson at his home address, have been refused. Those invoices form the subject matter of this appeal. They relate to conduct of the litigation from the commencement of proceedings up to and including the Court of Appeal, including counsels' fees. There is no mention of Praesto in the description of the work done to support the invoices.

23. Mr Ranson had a discussion with Sintons sometime before January 2011 about whether the invoices should be addressed to Praesto as well as himself. Mr Ranson was told that as soon as proceedings were issued by CSP the invoices should be in his name so as to match the title of the proceedings. It is not clear why that had to be the case. It could be because the work was being done solely for Mr Ranson. More likely is that there was another reason, for example that it would make the recovery of costs more straightforward if the invoices were addressed only to a party in the proceedings. We do not consider that the fact that the invoices were addressed to Mr Ranson leads inevitably to a conclusion that the services were not also being provided to Praesto.

24. We understand that Mr Ranson obtained a costs order against CSP. It is not clear to what extent VAT was a consideration in the costs claimed by Mr Ranson against CSP. In any event that should not affect the principle as to whether Praesto is entitled to input tax credit. There was no dispute that Praesto paid the invoices including the VAT element of the invoices.

25. During the course of HMRC's verification of the input tax claim, Sintons wrote to HMRC on 17 March 2014 stating their understanding of the position as follows:

> "*… the reality of the situation is that at the outset of the proceedings in November 2009, the litigation was directed at the key personnel of the company and was therefore also directed and intended to be directed against the company/business. In the circumstances and in answer to your enquiry, we acted on behalf of both Mr Ranson personally and Praesto Consulting UK Limited in relation to what was effectively litigation brought against both of them by a trade competitor.*"

26. We accept that is a fair summary of the position and find accordingly.

The Legal Framework

27. Sections 24 – 26 Value Added Tax Act 1994 govern the entitlement of a taxable person to input tax credit. They implement Article 168 of Directive 2006/112/EC ("the VAT Directive") which provides as follows:

> " *In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled… to deduct the following from the VAT which he is liable to pay:*
>
> *(a) the VAT due or paid… in respect of supplies to him of goods or services, carried out or to be carried by another taxable person…*"

28. It is well established that for a taxable person to be able to deduct input tax there must be a direct and immediate link between the transaction in which the input tax is incurred and the taxable person's output transactions or the taxable activity as a whole. Further, the existence of a direct and immediate link depends on objective factors and the objective character of the transaction in issue.

29. Those principles were applied by the Court of Justice of the European Union ("CJEU") in *Finanzamt Köln-Nord v Becker Case C-104/12*. In that case Mr Becker was a sole trader and also the majority shareholder and managing director of a construction company. Mr Becker and the company were treated as a single taxable person. The company performed a construction contract. Subsequently criminal proceedings were brought against Mr Becker and a co-director for bribery in connection with the circumstances in which the company had been awarded the contract. Criminal proceedings would also have been possible against the company but were not pursued. The criminal proceedings against Mr Becker were discontinued. Mr Becker's lawyer also represented the company and the lawyer's invoices were addressed to the company. The German tax authorities considered that the input tax was not deductible.

30. The CJEU was concerned in particular with the fact that the legal fees were not incurred exclusively for the taxable activity, but were also for the benefit of Mr Becker. The CJEU noted at [25] and [28] its decision in *Inverstrand Case C-435/05* to the effect that where the pursuit of the taxable activity is not the exclusive reason for fees and costs to be incurred, then those fees and costs cannot be considered as having a direct and immediate link with the activity. In Inverstrand the court held that even if Inverstrand had not carried out a taxable activity it would still have incurred the costs in question and therefore they could not have been incurred as a result of the taxable activity.

31. On the facts of Becker the CJEU went on to hold as follows:

> "*31. … there is no legal link between the criminal proceedings and [the company], and those services must therefore be considered to have been performed entirely outside [the company's] taxable activities.*
>
> …
>
> *33. …the answer to the first question referred is that the existence of a direct and immediate link between a given transaction and the taxable person's activity as a whole for the purposes of determining whether the goods and services were used by that person 'for the purposes of taxable transactions' within the meaning of Article 17(2)(a) of the sixth directive depends on the objective content of the goods or services acquired by that taxable person. In this case, the supplies of lawyers' services, whose purpose is to avoid criminal penalties against natural persons, managing directors of a taxable undertaking, do not give that undertaking the right to deduct as input tax the VAT due on the services supplied.* "

32. In short the CJEU found that on the facts there was no direct and immediate link between the legal fees and the taxable activity. The reason was because the proceedings were brought against the individuals in their private capacity rather than against the company. The purpose for which the fees were incurred was to avoid criminal penalties against the directors. The fact that the supplies would not have been made if the company had not exercised a taxable activity was not a sufficient link. In other words, it is not a "but for" test.

33. We agree with Mr Gibbon's submission that Becker is not authority for the proposition that legal services supplied in connection with proceedings against individuals cannot have a direct and immediate link with the taxable activity of a taxable person. It is a fact sensitive analysis.

34. There are also a number of domestic authorities which have a bearing on the issues before us. They were decided before Becker but it seems to us that they are all consistent with the decision in Becker.

35. In *Customs and Excise v Rosner* ([1994] STC 228, the taxpayer owned and managed a private educational business offering training to foreign students. He was charged under the Immigration Act 1971 with conspiracy to defraud by providing false information as to whether individuals were genuine students or not. He pleaded guilty and was ordered to pay the costs of the proceedings. He also incurred his own legal fees. Latham J dismissed Mr Rosner's claim for input tax credit. He distinguished expenditure which benefitted the business and expenditure which was directly referable to the purpose of the business. At p230 d-g he stated:

> " *... any one-man business depends on the presence of that man in order to run it. If that man is subject to criminal proceedings which may result in his being sent to prison and therefore no longer able to run the business, it could mean that the business will collapse if he is in fact sent to prison. It follows that expenditure made for the purposes of defending him in order to avoid that happening could be said to be for the benefit of the business.*
>
> *One only has to state that proposition to appreciate that there can be no question of describing sensibly the legal expenses of a person who has been charged with an offence wholly unrelated to his business as being expenses incurred for the purposes of the business. Benefit, therefore, cannot be the test. There must be a real connection, a nexus, between the expenditure and the business. It seems to me that the nexus, if it is not to be benefit, must be directly referable to the purpose of the business. By the purpose of the business in this context I mean by reference to an analysis of what the business is in fact doing. It is only by identifying what the nature of the business is in that way can one determine the extent to which any given expenditure can be said to be for the purpose of that business.*"

36. The description of Latham J of "*a real connection, a nexus*" echoes what the CJEU has described as a "*direct and immediate link*".

37. We were also referred to a decision of the VAT & Duties Tribunal in *P&O Ferries (Dover) Ltd v Commissioners of Customs & Excise [1992] VATTR 221*. Following the Zeebrugge ferry disaster, P&O and seven employees were charged with manslaughter. P&O was advised by its legal team that the success or failure of the prosecution of the company depended largely on the success of the prosecution of the seven individuals. P&O therefore instructed and paid each of the solicitors acting for each of the individuals. It was a term of the instructions that each solicitor worked with the company without prejudice to their duties towards their individual clients. P&O had some control over the solicitors employed, counsel chosen and fees paid to counsel. The defences of P&O and of the individuals was co-ordinated. There were clear benefits to P&O in successfully defending the proceedings against itself and all the individuals.

38. HM Customs & Excise refused input tax credit in relation to the legal fees incurred by P&O for the individuals on the basis that the services were not supplied to P&O and were not used for the purposes of its business.

39. The Tribunal (His Honour Stephen Oliver QC and Mr AJ Ring) held on the facts that the services were supplied to P&O for the purposes of its business notwithstanding that individual employees also received the benefit of those services. It found that both were clients of the solicitors instructed. Further the substantial benefit to the individuals did not did not prevent the expenditure being incurred for the purposes of P&O's business. The Tribunal distinguished previous decisions of the VAT & Duties Tribunal involving "one man companies" where shareholder directors had incurred legal fees when charged with criminal offences.

40. In *Revenue & Customs Commissioners v Jeancharm Ltd [2005] EWHC 839 (Ch)* Lindsay J identified what he described as the "to whom" question and the "purpose" question. The services had to be supplied to the taxable person and for the purposes of his taxable activities. Whilst Jeancharm involved supplies of legal services in connection with the prosecution of an employee for causing death by dangerous driving, otherwise the facts are far removed from the present case. It was clear in that case that the services were not supplied to the taxable person.

41. There are also a number of domestic authorities which deal with the principles of input tax credit more generally, not simply in the context of whether legal fees have a direct and immediate link to a taxable activity. Transactions involving three or more parties often lead to a difficult analysis in terms of what is being supplied and to whom. We were referred by Mr Gibbon to the well known decision of the House of Lords in *Customs & Excise Commissioners v Redrow [1999] STC 161* as authority for the proposition that a taxable person may still be entitled to deduct input tax where the services are supplied to a third party. Strictly the House of Lords held that the services were paid for by and supplied to Redrow, even if the housebuyers also received a benefit from the services.

42. Subsequent decisions of the Supreme Court have considered Redrow. Most recently and following the hearing of the present appeal the Supreme Court handed down judgments in the case of *Airtours Holidays Transport Limited v Commissioner*

for HM Revenue & Customs [2016] UKSC 21. That was a majority decision of the Supreme Court which highlights the difficulties in analysis that arise in such cases.

43. Airtours concerned the VAT on professional fees of PricewaterhouseCoopers in relation to a refinancing package that Airtours was negotiating with various lending banks. The tri-partite arrangements involved Airtours, PwC and the lending banks. PwC invoiced Airtours for its fees. The First-tier Tribunal had held that Airtours had received supplies from PwC that were used for the purposes of its business and therefore it was entitled to input tax credit. The Upper Tribunal disagreed. It concluded that the substance of the transactions was a supply of services by PwC to the lending banks which used those services for the purposes of their own businesses, notwithstanding that Airtours had contracted to pay the fees of PwC. The Court of Appeal dismissed Airtours appeal by a majority and the Supreme Court also by a majority upheld the Court of Appeal.

44. The issues were summarised by Lord Neuberger at [21] as follows:

> " *21. The first question is whether, under the terms of the Contract, PwC agreed with Airtours that it would supply services, and in particular to provide the Report. If the answer to that question is yes, then the Commissioners accept that there has been a supply of services to Airtours, and that this appeal must be allowed, subject to a question of apportionment. On the other hand, if the answer to that first question is no, then the Commissioners contend that this appeal must be dismissed, but Airtours contends that its appeal should still succeed, subject, again to a question of apportionment. In effect, on this second point, Airtours argues that, in order to show that it received a supply of services from PwC for the purposes of VAT, it does not have to show that it had a contractual right to require the Services to be provided to the Institutions by PwC.*"

45. The first question was essentially a matter of construing the contract to identify whether there was a contractual obligation on PwC to Airtours to supply the report to the lending banks. The Supreme Court held that there was no such obligation.

46. The second question was whether there was nonetheless a supply by PwC to Airtours. The Appellant relied on the judgment of Lord Millett in Redrow at 418G where he said "*[o]nce 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?*". However Lord Millett's statement was later qualified by the Supreme Court in *Revenue and Customs Commissioners v Loyalty Management UK Ltd* [2013] STC 784.

47. Lord Neuberger went on the summarise the position at [50] of Airtours as follows:

> " *50. From these domestic and Court of Justice judgments, it appears clear that, where the person who pays the supplier is not entitled under the contractual documentation to receive any services from the supplier, then, unless the*

documentation does not reflect the economic reality, the payer has no right to reclaim by way of input tax the VAT in respect of the payment to the supplier."

48. The majority in the Supreme Court held that the contract did reflect the economic reality. The benefit obtained by Airtours was not the services from PwC but the enhanced possibility of funding from the lending banks. PwC's services were supplied to the lending banks.

Reasons and Decision

49. Mrs Fletcher for the Respondents identified the following issues in relation to the input tax credit being claimed by Praesto:

(1) The services must be supplied to Praesto, and

(2) The supply must have a direct and immediate link to Praesto's taxable activities.

50. We accept Mrs Fletcher's submission that input tax is only deductible where the supply is made to the taxable person and it is made for the purposes of that person's taxable activities. Mrs Fletcher argued that whilst Praesto had paid the Sintons invoices, the services had been supplied to Mr Ranson and not to Praesto. Further she argued that there was no direct and immediate link between the services supplied and the taxable activities of Praesto. She relied on Becker as authority for the proposition that the exclusive reason for the supply must be the taxable activities of the taxable person.

51. It seems to us that the following issues arise:

(1) Do the invoices relate to services supplied by Sintons to Praesto?

(2) If so, did the services have a direct and immediate link to Praesto's taxable activities?

52. Correspondence between the parties prior to the appeal focussed on the second issue. It did not appear, at least at that stage, that the Respondents were arguing that the services had not been supplied to Praesto. Mr Gibbon, rightly in our view, did not object to the Respondents relying on both issues in the appeal. We address both issues in turn.

53. We are satisfied that both Mr Ranson and Praesto were clients of Sintons. All the work done by Sintons was on behalf of Mr Ranson and Praesto. The fact that Praesto was not a party in the trial on liability does not affect that conclusion. Praesto was directly affected by the result. The services of Sintons were supplied to Praesto just as much as if it had been a party. That was the reality of the relationship between Sintons, Mr Ranson and Praesto. It is clear that CSP would have sought to join Praesto as a party if it had been successful on liability. Indeed it considered applying to join Praesto as a party during the course of the trial on liability and it appears only to have been procedural difficulties which prevented it from making such an application at that time.

54. The first invoice was addressed to Praesto and was paid by Praesto. The Respondents did not seek to disallow the input tax credit claimed by Praesto. The Respondents must have concluded, correctly in our view, that those services were supplied to Praesto as well as Mr Ranson.

55. In our view the substance of the relationship between Sintons, Mr Ranson and Praesto continued after the first invoice. For some reason, not entirely clear, CSP chose to name only Mr Ranson as a defendant together with the other individuals, and not Praesto. It was Praesto that had made the profits from any breach of duty by Mr Ranson and all parties appeared to recognise that it was Praesto's profits that would have to be accounted for, either by Mr Ranson or by Praesto itself.

56. The invoices at issue in the present case were addressed to Mr Ranson. As the Supreme Court in Airtours noted at [53]: "*the VAT Directives … contemplate that VAT on a supply will be the subject of an invoice directed to the recipient of the supply*". Mrs Fletcher relied on the fact that the invoices were not addressed to Praesto. As we understand Mrs Fletcher's submissions, that was for the purposes of her argument that the supplies were not actually made to Praesto. She was not raising a further independent objection to input tax credit. We assume that is because HMRC can accept evidence other than a VAT invoice to support entitlement to an input tax credit (see *Regulation 29(2) Value Added Tax Regulations 1995*).

57. In the circumstances we conclude that the invoices do relate to services supplied by Sintons to Praesto.

58. The second issue is whether the supplies had a direct and immediate link to Praesto's taxable activities.

59. In Becker, the company was not a party or a necessary party to the proceedings. Plainly there would be some benefit to the company if Mr Becker was acquitted of the criminal charges. But benefit is not the test, as held by Latham J in Rosner. There must be something more than a benefit to the taxable person. In the present case Praesto may be viewed a party to the proceedings in all but name. It had a direct interest in CSP's claim being dismissed, otherwise there was a real risk that it would have to account for the profits it had made in competition with CSP.

60. In that sense Praesto's position was similar to that of P&O. Whilst P&O is a decision of the VAT Tribunal and not binding on us, the decision was consistent with the subsequent cases of Rosner and Becker. It seems to us that the link in the present case was at least as direct and immediate as it was in P&O. If the supplies had not been made to Praesto then it was at serious risk of having to account for the profits of its past and future taxable activities. In one sense it is more direct and immediate. CSP commenced the proceedings directly as a result of Praesto's taxable activities. Objectively, the reason Praesto obtained the services was to limit any liability arising from its taxable activities.

61. In our judgment the link between the supplies and Praesto's taxable activities is sufficiently direct and immediate to entitle Praesto to the input tax credit. The supplies were therefore made to Praesto for the purposes of its business.

62. During the course of correspondence it was suggested that if there was an entitlement to input tax credit then Praesto would not be entitled to full credit and it would be necessary to apportion the input tax. The need for apportionment was also one of the questions referred in Becker but it was not answered by the CJEU given its answer to the first question. We raised the point but neither party pursued such an argument before us.

Conclusion

63. For the reasons given above we have concluded that Sintons' supplies were made to Praesto and that they had a direct and immediate link to Praesto's taxable activities. In the circumstances we allow the appeal.

64. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 13 JULY 2016