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A tax windfall for solicitors?

Make a back claim for VAT bad debt relief

An extraordinary VAT case could be worth a lot of money to solicitors: if you issue a VAT-only invoice to your client and the client fails to pay, you can claim VAT bad debt relief and get the full amount back, not just a proportion representing the VAT rate.

This arises when someone else is paying the costs, but your client is VAT registered and can reclaim VAT on your fees. You bill the client for the VAT element and send a non-VAT invoice to the third party, who pays the net of VAT costs. Most often that is the client's insurer paying your litigation costs, but it could also be a tenant paying a landlord's costs, or the losing party in litigation paying the winner's lawyer's costs. But what if your client fails to pay the VAT? You may have difficulty recovering it; if you were instructed by the insurer you may have no real relationship with the client, and you will not have been able to do credit checks or get money on account.

Previously it was assumed (and case law said) that you had to treat this like any other bad debt, and the fact that you had issued separate invoices for the fee and the VAT was irrelevant: you had (at 20%) recovered 5/6th of your VAT-inclusive fee so you claimed bad debt relief on 1/6th, and got 1/6th of that back, or 1/36th of the total; you were out of pocket by 5/36th. In *Simpson & Marwick v HMRC*¹ the Upper Tribunal said this was wrong: if the bad debt is clearly identified as the VAT element, it can be claimed in full – HMRC loses the entire 6/36th.

It is worth reviewing records and talking to your accountants about making back claims for relief. The case could yet be appealed so do make appropriate disclosures in any claim.

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January 2012

¹ [2011] UKUT 498 (TCC)