

Insurance Services

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Graham Elliott

CONSULTANT | UK

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Insurance services are generally exempt from VAT. This ought to cover services of intermediaries, often called insurance brokers or insurance agents. The basic premise is that the broker intercedes between the person who needs the insurance and the person who can provide it. He usually has direct contact with both sides. But it is accepted that there can be more than one agent in the chain and it is possible for one broker to be put in touch with an insurance company by another intermediary. The key to this however is that the commissions payable on the insurance supply are effectively shared between all parties that make the arrangements, and there is a clear trail of activity linking all of the participants together.

That all seems like common sense, but that is not the only business model in the marketplace. For instance, Westinsure operates a slightly different model, which involves it standing between an insurer and a number of individual small insurance brokers and making the introductions needed between the parties. Put simply, the insurer would not deal with such small brokers, were it not for Westinsure. It deals with Westinsure acting as the brokers' 'front-end', and thereby allowing a direct link between the insurer and the brokers which the brokers would otherwise be denied. This in turn allows the brokers to sell insurance to people who need it. Westinsure obtains payment from the brokers, and not from the insurers.

But HMRC decided for some reason that Westinsure's service was not intermediation at all, but just 'marketing' or 'introduction'. Westinsure appealed, but the First Tier Tribunal did not think that this was a genuine insurance intermediary service either. This was business-critical, because the brokers who paid the fees cannot reclaim VAT.

This decision was duly appealed to the Upper Tribunal, but unfortunately the Upper Tribunal shared the view of the First Tier Tribunal. It thought it unimportant that Westinsure's involvement was vital to the chain of transactions, appearing to think that Westinsure did not sit within the chain of transactions as such, but merely opened a few doors. It shared the First Tier Tribunal's view that the service was too vague to fall within the specified categories of 'insurance intermediary'.

This remains a surprising decision, since it seems obvious that Westinsure was not providing a marketing or introductory service, but was a vital route between the insurer and the brokers, and thus was analogous to an intermediary broker whose services would normally be regarded as exempt. It is not easy to understand how the Tribunals have reached this decision. It is an unfortunate outcome and we should hope that Westinsure will have the courage to appeal further.

Authors

Graham Elliott

CONSULTANT | LONDON

International corporate tax

 +44 20 7597 6112

 graham.elliott@withersworldwide.com