

## VAT and disbursements

### A ruling in a recent First Tier Tribunal (FTT) case may have significant implications for and lawyers.

In the case of *Brabners LLP – Case TC06093*, the FTT ruled that the cost of online property searches procured by a firm of solicitors from a search agent could not be passed on ‘VAT free’ to their clients. This was on the basis that the search services were consumed by the solicitors and formed an incidental part of the solicitors’ services to its clients. As the principal supply made by the solicitors was subject to VAT at the standard rate, the result was that VAT became due on what had been thought to be disbursements.

The decision is specific to online searches provided by Searchflow. A concession published by HMRC in 1991 and agreed with the Law Society allows for postal searches of the type provided by Searchflow and others to be treated as disbursements (this concession remains, at least for the time being, extant), which *Brabner* had relied on in assessing the VAT treatment of the supplies made to its clients.

The FTT’s ruling did not consider the disparity of its decision on the treatment of online searches and postal searches on the basis that the case did not explicitly consider the question of postal searches.

It follows, therefore, that the *Brabner* decision, may well be appealed to a higher authority. However until such time as this becomes clear, it is recommended that law firms (and any other businesses that may procure online searches) review their current position to determine whether there is any risk that they may be affected by the *Brabner* ruling. This applies to all types of search fees, whether electronic, personal or postal.

Where, however, there are any types of searches (or similar services) which are undertaken for clients that are simply passed onto the clients – and which meet the tests (set out below) – condition 2) in particular - then these should continue to be treated as outside the scope of VAT as they will be ‘true’ disbursements).

The conditions, to be met for a charge to be a true ‘disbursement’ for VAT purposes are below with (‘A’) being the solicitor and (‘B’) their client:

1. (A) acted for his own client (B) when paying the third party.
2. (B) actually received and used the goods or services provided by the third party.
3. (B) was responsible for paying the third party.
4. (B) authorised A to make the payment on his behalf.
5. (B) knew that the goods or services would be provided by a third party.
6. The outlay of (A) must be separately itemised when invoicing (B).
7. (A) must recover only the exact amount he paid to the third party.
8. The goods or services paid for must be clearly additional to the supplies made to (B).

For a cost to be treated as a ‘VAT free’ disbursement, **all** conditions need to be met but it is usually condition 2) above that prevents expenses from being treated in this way.

Any businesses who consider that they may be affected by the *Brabner* decision should contact their usual Wilkins Kennedy partner or alternatively call Andy Dawbarn or Carl Nielsen on 020 7403 1877 to discuss how to take matters forward.

[www.wilkinskennedy.com](http://www.wilkinskennedy.com)