

**LONDON TRIBUNAL CENTRE**

**LON/2000/54**

**B E T W E E N:**

**D L MARKETING (DIRECT LINK) LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS OF CUSTOMS AND EXCISE**

**Respondents**

**Tribunal: Mr Paul W de Voil (Chairman)**

**Mrs S Sadeeqe MBCS**

**Sitting in public in London on 9 and 10 November 2000**

**Mr R Barlow, of Counsel, instructed by W J B Chiltern for the Appellant**

**Mr Hugh McKay, of Counsel, instructed by the Solicitor of Customs & Excise, for the Respondents**

## DECISION

1. D L Marketing (Direct Link) Ltd appeals against a decision of the Commissioners dated 4 January 2000 that supplies which it makes to Cornhill Insurance are standard-rated supplies of advertising services rather than zero-rated supplies of printed material.

### The facts

2. Evidence, which we accepted, was given by Keith Charles White of the Appellant company and Russell Peter Spencer of Cornhill Insurance. From their evidence, and from the documents put in, we find the following facts.

3. The Appellant organisation has been registered for VAT from 21 June 1992, originally as a sole trader, then as a partnership and finally as a limited company. Originally it regarded itself as a consultancy giving standard-rated advice; as its printing business increased it changed its registration category to "printing" it would have used "print broking" had there been such a category available.

4. The Appellant operates from an address in Leonard Street in the City of London) with three staff, supplying creative work, artwork and printing. It is not an advertising agency. It is not the business of the Appellant itself to have ideas, or to execute artwork, or to do printing; it is its business to know where ideas or artwork or printing are to be found and to sub-contract them accordingly. It acts as a broker or intermediary.

5. "Artwork" should not be thought of as having too elevated a meaning; it consists of getting ideas into a form suitable for printing. The changing of a print colour, or of a date at the foot of an advertising leaflet, is regarded as artwork; the witnesses saw artwork as a separate process, but as closely linked to the printing process.

6. When Cornhill has a new insurance product, or a new version of an insurance product, which it wishes to bring to the attention of the public it will approach the Appellant company, and possibly other similar suppliers, for whatever it needs in the three categories and which it does not want to produce in-house. It may ask for creative work to begin with; if it accepts it it will pay for it. Creative work may be used once or a hundred times or not at all - ninety per cent of it never sees the light of day. There is no guarantee, explicit or "understood", that creative work will result in an order for artwork or printing work; the Appellant's creative work may be given to others for artwork and printing, or the creative work of others - including Cornhill itself - may be given to the Appellant for execution.

7. If artwork and/or printing work are in fact to be ordered, there will be discussions between the Appellant and Cornhill and detailed specifications will be prepared for Cornhill's approval. When artwork has been completed, it will also be sent to Cornhill for approval. When the printing work has been done and all the printed material has been put into envelopes, Cornhill sees to their franking and despatch. The Appellant's responsibility has ended at that point - in fact, the Cornhill witness regarded the whole operation as Cornhill's responsibility.

8. About one half of one per cent of the Appellant's turnover relates to creative work and something like five per cent to artwork; by far the largest proportion relates to printing. This is to some extent a function of quantity, but the bulk of the time occupied also relates to printing.

9. We were shown copies of typical invoices issued by the Appellant. For example, on one job there was an invoice for £760 plus VAT for "pre-print disc preparation" i.e. artwork, and another invoice several weeks later for £42,270 zero-rated for "producing the pack" i.e.

printing work.

10. Mr McKay, for the Commissioners, tried very hard to get the witnesses to admit that they were engaged in the dissemination of a message. They declined to be drawn; Mr White insisted that his only interest was in getting ink on paper not in “banging the Cornhill drum”.

### **The law**

11. Item 1 of Group 3 to Schedule to the VAT Act 1994 zero-rates:

Books, booklets, brochures, pamphlets and leaflets.

12. We were referred to the following cases:

Card Protection Plan Ltd v. Customs and Excise Commissioners (Case C-349/96) [1999] STC 270

Customs and Excise Commissioners v. British Telecommunications plc [1999] STC 758

Customs and Excise Commissioners v. Wellington Private Hospital Ltd [1997] STC 445

EC Commission v. French Republic (Case C-68/92) [1997] STC 684

EC Commission v. Kingdom of Spain (Case C-73/92) [1997] STC 700

EC Commission v. Grand Duchy of Luxembourg (Case C-69/92) [1997] STC 712

Appleby Bowers v. Commissioners of Customs and Excise Decision No.16719

Direct Marketing Bureau v. Commissioners of Customs and Excise Decision No.16696

### **Conclusions**

13. The Respondents contend that the Appellant is making single supplies which can be categorised as “advertising services” and are therefore standard-rated. The Appellant contends that it is making separate supplies of creative work, artwork and printing, of which the third (and possibly also the second) are zero-rated. Alternatively, if there are single supplies, the creative work and the artwork are ancillary to the printing, not vice versa.

14. We had better dispose first of the three European cases. These are concerned not with whether advertising services are taxable but with where they are taxable – an entirely different question. The Judge Rapporteur thought it inappropriate to consider how the term “advertising services” should be interpreted in general; the Court did not need to bind itself to a general arid abstract definition. The Court did not disagree and merely held that France, Spain and Luxembourg had gone too far in excluding certain services from the category of advertising services taxable where the recipient belongs; the concept of advertising necessarily entails the dissemination of a message intended to inform consumers of the existence and the qualities of a product or service.

15. We do not regard these cases as entitling the Commissioners to say that if they can somehow shoe-horn supplies into something which can be described as “advertising services” those supplies are therefore deprived of the zero-rating to which they would otherwise be entitled. That is what the Commissioners tried to do with “diplomatic services” in Bophuthatswana National Commercial Corporation Ltd v. Customs and Excise Commissioners [1993] STC 702 - a case which was only mentioned before us in passing - and with “computer services” in Laurentian Management Services Decision No.16,447 - a recent decision of this Tribunal. When taxpayers do this sort of thing, it is apt to be castigated as “tax avoidance”; when Revenue departments do it from the entirely laudable motive of increasing the public revenue - it might perhaps be labelled “tax aggrandisement”. We do not attach much importance to the witnesses’ unwillingness to join Mr McKay in his exploration of the concept of “disseminating a message”. That might be relevant if we were deciding in which country (if any) the services were taxable; not so when we are deciding questions of single/multiple supplies, and of the zero-rating of one part of those supplies.

16. We regard the question here as being simply: is there a single supply of something, however described, or several supplies of different goods and/or services. We agree with Mr McKay that the two basic principles are:

- (a) that every supply should normally be treated as distinct and independent; and
- (b) that single supplies should not be artificially split.

The application of these question-begging principles is another matter; what is “normal” and what is “artificial”? Looking at the commercial reality of this case, we cannot find a single supply which it would be artificial to split; we find separate supplies which it would be artificial to lump together. When the Appellant provides creative work, it no doubt hopes that it will be accepted and will lead to artwork and, more importantly, to printing work – hope springs eternal. That hope is frequently frustrated; the witnesses made it clear that the decision whether to accept the creative work and whether to give the artwork and the printing to the supplier of that creative work was entirely the client’s commercial decision. The client might bear in mind the desirability of maintaining an amicable relationship with its suppliers, but one can put it no higher than that.

17. We were not shown any invoices where all three types of supply had been charged on the same invoice. Even if we had been, we should not have regarded that as conclusive; the charging of a single price is no more conclusive than the question of “economic dissociability”. (One printing invoice was occasionally cross-referenced to another printing invoice relating to the same job, but that is no more than one would expect).

18. The British Telecommunications case suggests that this is a question of fact and degree, taking account of all the circumstances. Bearing that guidance in mind, we have no hesitation in finding that there are separate supplies here, of which the creative work is clearly standard-rated and the printing work clearly zero-rated; we express no decided opinion regarding the artwork. If we were wrong and this were to be considered a single supply, we should regard it as a zero-rated supply of printing materials, the creative work and the artwork being ancillary to that supply.

19. We are fortified in our view by a consideration of the decision in Direct Marketing Bureau; this is persuasive rather than binding on us, but we find it highly persuasive. Mr McKay in his skeleton argument submitted that the reasoning in that decision must be strictly confined to its own facts. He did not succeed in establishing this to our satisfaction. The facts are not all that dissimilar, and where they are we find the reasoning convincing without particular reference to those facts. We did not find the Appleby Bowers decision equally

relevant or persuasive; it has in any case now been reversed on appeal.

20. The appeal is accordingly allowed; the Appellant is entitled to its costs on the usual basis.