

Pump Court Tax Chambers – Problem Question Competition 2020/21

First Prize - £750 and a mini-pupillage

Runner-up prizes of up to £500 at judges' discretion

Eligibility

Entrants must be studying at a UK university/college or have completed their studies at a UK university/college within the past three years (applicants do not necessarily need to have been studying law) but must not have commenced a training contract or pupillage. Each entry should be the work of a single author (so no joint entries are allowed).

Submitting Entries

Please submit an answer to this problem question by no later than **5pm on 15th January 2021**.

Entries should be 750-1000 words (including footnotes), and should be sent in Word format to competitions@pumptax.com with a covering email stating the student's full name, university or college, and contact details. Judging is anonymous so please do not include your name in the essay itself.

Instructions

Entrants should read the case of *Gray & Farrar International LLP v HMRC* [2019] UKFTT 684 (TC), available here: <https://www.bailii.org/uk/cases/UKFTT/TC/2019/TC07457.html>

In answering the questions set out below, you can make reference to the quotations from other cases that are mentioned in *Gray & Farrar*, but there is no need to refer to any other cases or undertake any wider research.

Your answer can be structured/presented in any manner preferred and conciseness is encouraged.

Background

Value added tax (“**VAT**”) is a tax charged on “supplies” of goods and services (generally charged at a rate of 20% of the consideration for the transaction). VAT is governed by the Principal VAT Directive: Council Directive 2006/112/EC. In broad terms, a supply of services is anything done for consideration that is not a supply of goods. A supply of services made outside the EU is generally outside the scope of VAT (and is not subject to VAT at all). There are a number of rules which determine the place where a supply is made, including Article 59 of the Principal VAT Directive. Where Article 59 applies, a supply of services to a consumer who resides outside the EU will be treated as made outside the EU.

Article 59 applies to a number of specified services, including:

“(c) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information”

As described in more detail in the decision, Gray & Farrar is an exclusive matchmaking business. The issue for the Tribunal was whether the services supplied by Gray & Farrar fell within Article 59(c).

Assumptions

At paragraphs 4 – 10, the Tribunal set out ‘uncontentious matters’. You can assume the Tribunal’s summary of these matters is correct and remains uncontentious.

At paragraphs 11 – 36, the Tribunal set out its analysis on ‘areas in dispute’. You can assume the Tribunal’s conclusions on these points are correct and these areas are no longer disputed.

At paragraph 79, the Tribunal concluded that the constituents of the supply by Gray & Farrar were provision of information and advice. You can assume that the Tribunal’s conclusion on this is correct.

Questions

Please review the Tribunal's decision and answer the following questions:

1. At paragraphs 80 – 83, the Tribunal considered whether the advice given to Gray & Farrar's clients was "expert advice", and concluded that it was. What conclusion would you have reached on this issue, and why?
2. At paragraphs 86 – 91, the Tribunal considered whether the 'continuing contact' with clients (also referred to as 'hand holding contact') was 'ancillary' to the provision of contact details and the advice implicit in providing those contact details. The members of the Tribunal reached different conclusions on this issue. What conclusion would you have reached on this issue, and why?

For the purposes of Question 2, a service is to be regarded as ancillary if "*it does not constitute for the customer an aim in itself, but is a means of better enjoying the principal service supplied*".