Neutral Citation: [2025] UKFTT 01600 (TC)

Case Number: TC09729

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House

Appeal reference: TC/2024/01227

VALUE ADDED TAX – claim to recover input tax in respect of costs incurred on fuel and repairs and maintenance for trucks owned by a third party and used to deliver goods to the Appellant's clients – considering, in the light of the applicable case law, whether the recipient of the supplies in question was the Appellant or the third party owner of the trucks – concluding that, although, as a matter of the contractual analysis, the third party owner was using the trucks to supply transport services to the Appellant, the economic and commercial reality of the arrangement was that the third party owner was simply making the trucks available to the Appellant in return for payments of fixed amounts per kilometre and that the Appellant was using the trucks in the course of its business in the same way as if it had owned the trucks itself – it followed that the goods and services had been supplied to the Appellant in the course of its business and that the Appellant was therefore entitled to a credit for the input tax attributable to the supplies – appeal allowed

Heard on: 1, 2 and 3 December 2025
Judgment date: 16 December 2025

Before

TRIBUNAL JUDGE TONY BEARE
MS HELEN MYERSCOUGH

Between

D NUTTALL UK LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Richard Vallatt KC and Mr Joshua Stevens, of counsel, instructed by the Appellant

For the Respondents: Mr Ross Birkbeck and Mr Zachary Salmon, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This decision relates to two appeals made by the Appellant as follows:

   (1) an appeal against assessments notified by the Respondents on 31 July 2023 under Section 73 of the Value Added Tax Act 1994 (the "VATA") in respect of the Appellant's value added tax ("VAT") periods 09/19 to 03/23 (inclusive) but with the exception of the Appellant's VAT period 09/22 (together, the "Assessments" and, each, an "Assessment"); and

   (2) an appeal against the Respondents' decision notified by the Respondents on 31 July 2023 under Section 25(3) of the VATA to reduce the VAT input tax credit to which the Appellant was entitled in respect of the Appellant's VAT period 09/22 (the "Decision").

2. In this decision, we will refer to the Appellant's VAT periods which were the subject of the Assessments and the Decision as the "Relevant Periods".

3. The reduction in the VAT input tax credit set out in the Decision was originally £28,740.51 but that was reduced and notified to the Appellant in the Respondents' review conclusion letter of 4 December 2023 to £27,938.14.

4. The amount of VAT set out in the Assessments of £278,210 was not reduced and notified to the Appellant in the Respondents' review conclusion letter of 4 December 2023 but was subsequently reduced and notified to the Appellant in a letter from the Respondents of 13 May 2024 to £256,661.50.

5. Accordingly, the aggregate amount at stake in the two appeals is £284,599.64.

6. There is no dispute between the parties in relation to whether that amount is correct. Instead, the sole issue for us to determine – which underlies both the Assessments and the Decision – is whether the Appellant is entitled to claim a VAT input tax credit in respect of:

   (1) specified supplies of fuel (the "Disputed Fuel Supplies"); and

   (2) specified supplies of repairs and maintenance (the "Disputed R&M Supplies" and, together with the Disputed Fuel Supplies, the "Disputed Supplies"),

which in each case were made in the UK during the Relevant Periods.

7. In short, the Appellant submits that each of the Disputed Supplies was made to the Appellant whereas the Respondents submit that each of the Disputed Supplies was instead made to the owner of the trucks in relation to which the Disputed Supplies were made, a Romanian company called S.C. ROBO International S.R.L ("ROBO").

THE AGREED FACTS

8. In broad terms, the facts which are relevant to these appeals are common ground. They are as follows:

   (1) the Appellant, which is owned and directed by Mr Darren Nuttall, carries on an international haulage business, which transports goods for its clients from one location to another. It operates both in the UK and in continental Europe;

   (2) during the Relevant Periods, the Appellant had its own trailers (in which goods were stored and transported) and its own warehousing facilities. However, it did not have its own trucks to pull the trailers and therefore needed access to trucks in order to carry on its operations;

(3) access to the trucks was provided by ROBO, which was owned and directed by Ms Daria Trusca. Although Mr Nuttall has since acquired ROBO, ROBO was an independent company unrelated to the Appellant during the Relevant Periods; and

(4) the trucks were driven by drivers almost all of whom were employees of the Appellant although a small number – no more than two at any time during the Relevant Periods – were employees of ROBO.

THE ISSUE IN DISPUTE

9. However, the statements set out in paragraph 8 above belie the fact that there is a very material dispute between the parties as to the basis on which the Appellant was able to benefit from the use of ROBO's trucks in carrying on its business.

10. Mr Birkbeck and Mr Salmon, on behalf of the Respondents, submit that the Appellant did so by effectively sub-contracting to ROBO its obligation to transport goods for its clients. In other words, the Appellant agreed with ROBO that:

(1) ROBO would provide it with transport services which the Appellant could then use in the course of its business; and

(2) as consideration for its receipt of those transport services, the Appellant would pay a fixed amount to ROBO for each kilometre driven by the trucks (the "fixed payments") and meet all of the costs associated with the use of the trucks (including, in particular, the fuel, the repairs and maintenance and the drivers) but not the costs of insurance, the road tax or the goods vehicle operator's licensing fees (the "excluded costs").

11. Mr Vallatt and Mr Stevens, on behalf of the Appellant, submit that, on the contrary, the Appellant did not formally sub-contract to ROBO its obligation to transport the goods for its clients by engaging ROBO to provide transport services. Instead, the arrangement between the parties was simply that, in return for making the fixed payments to ROBO, the Appellant would be allowed by ROBO to use the trucks in the course of its business and, as such, the Appellant would inevitably be responsible for all of the costs associated with the use of the trucks (including, in particular, the fuel, the repairs and maintenance and the drivers) but not the excluded costs. At the hearing, Mr Vallatt and Mr Stevens were reluctant to call the arrangement so described as the hire of trucks by ROBO to the Appellant but we consider that that is exactly the nature of the arrangement they were advancing. Nevertheless, in deference to their reluctance, in the rest of this decision we will refer to the arrangement they were advancing as ROBO's making the trucks available to the Appellant, as opposed to hiring the trucks to the Appellant.

12. The difference between the two analyses set out in paragraphs 10 and 11 above is at the heart of this dispute.

THE RELEVANT LAW

Introduction

13. Before we describe the evidence with which we were provided at the hearing, we should briefly set out the relevant law.

The relevant legislation

14. There was no dispute between the parties as to the legislation that was relevant to the dispute.

15. It is common ground that the Appellant is a taxable person for VAT purposes and that each of the Disputed Supplies was made in the UK.

16. The sole issue in dispute is whether the Appellant had the right to credit as VAT input tax the VAT attributable to each of the Disputed Supplies.

17. In that regard:

(1) Section 24(1)(a) of the VATA defines VAT input tax in relation to a taxable person as including "VAT on the supply to him of any goods or services";

(2) Section 25(2) of the VATA entitles a taxable person to a credit in each VAT period "for so much of his input tax as is allowable under section 26";

(3) Section 26 of the VATA provides that VAT input tax is allowable to the extent that it is attributable to "supplies made or to be made by the taxable person in the course or furtherance of its business"; and

(4) Section 25(3) of the VATA provides that, if no VAT output tax is due in respect of the VAT period or if the amount of the VAT output tax that is due in respect of that period is less than the amount of the VAT input tax for which credit is available, then the Respondents are required to pay to the taxable person the amount of the VAT input tax credit or the amount by which the VAT input tax credit exceeded the VAT output tax (as the case may be).

18. The above provisions reflect equivalent provisions in Directive 2006/112/EC (the "PVD") – see Articles 168(a), 179 and 183 of the PVD.

19. In the present context, so far as the Relevant Periods are concerned:

(1) the PVD had direct effect in UK law until the end of the Brexit implementation period on 31 December 2020 – see the European Communities Act 1972 and Section 1A of the European Union (Withdrawal) Act 2018 (the "EUWA 2018"); and

(2) after 31 December 2020, the PVD ceased to have direct effect but the provisions of UK law specified in paragraph 17 above, as "retained EU law", were required to be interpreted in conformity with the PVD – see Sections 2 and 6 of the EUWA.

20. Each Assessment has been made under Section 73(1) of the VATA on the basis that the return for the VAT period to which it relates was "incomplete or incorrect". The provision specifies that, in such a case, the Respondents may assess the amount of VAT due "to the best of their judgment" within the time limit specified by Sections 73(6) and 77 of the VATA. In this case, the Appellant accepts that each Assessment has been made to the best of the Respondents' judgment and within the statutory time limit. Accordingly, the appeal against the Assessments is founded solely on the fact that they are incorrect in reflecting the denial by the Respondents of the right to deduct VAT input tax in respect of the Disputed Supplies. As such, the appeal is made under Section 83(1)(c) of the VATA.

21. The Decision, although not an assessment to VAT, was a decision with respect to the amount of VAT input tax which the Appellant was entitled to deduct. As such, the appeal against the Decision has also been made under Section 83(1)(c) of the VATA. However, there is a point which logically needs to be addressed before considering the Appellant's right to appeal against the Decision and that is whether, as a matter of VAT law, the action which the Respondents took in issuing a decision to the effect that the Appellant was not entitled to deduct the relevant VAT input tax and without making an assessment was one which the Respondents were entitled to take. So far as the hearing before us is concerned, the Appellant accepts that the Upper Tribunal decision in *Benridge Care Homes Limited v The Commissioners for Her Majesty's Revenue and Customs* [2012] UKUT 132 (TCC) is binding authority for the proposition that the Respondents were so entitled but it has reserved the

right to contest that position in the event that the proceedings in the appeal against the Decision go further.

The relevant case law

22. So far as this decision is concerned, the case law relating to the identification of the recipient of a supply of goods or services gives rise to the following applicable principles:

(1) in identifying whether a person has received a supply, it is necessary first to consider the rights and obligations to which the arrangement in which the supply has been made gives rise as a matter of contract – in other words, was there a contractual obligation on the part of the supplier to supply the goods or services in question to that person – and then to consider whether, taking account of all the circumstances, the contractual analysis reflects the economic and commercial reality of the arrangement – see *AirTours Holidays v The Commissioners for Her Majesty's Revenue and Customs* [2016] 4 All ER 1 ("*AirTours*") at paragraphs [20], [21], [48] and [49], *WHA v The Commissioners for Her Majesty's Revenue and Customs* [2013] UKSC 24 ("*WHA*") at paragraphs [27] to [39] and *The Commissioners for Her Majesty's Revenue and Customs v Newey (trading as Ocean Finance)*(Case C-653/11) ("*Newey*") at paragraphs [40] to [45];

(2) the labels which the parties to an arrangement have used to describe their arrangement "cannot be conclusive and may often be of little weight" – see *Secret Hotels2 Ltd (formerly Med Hotels Ltd) v The Commissioners for Her Majesty's Revenue and Customs* [2014] UKSC 16 ("*Secret Hotels2*") at paragraph [32] and, although contractual terms constitute a factor to be taken into account, they sometimes do not wholly reflect the economic and commercial reality of the transactions – see *Newey* at paragraph [52]) and *Airline Placement Ltd v The Commissioners for His Majesty's Revenue and Customs* [2025] UKFTT 894 at paragraph [87];

(3) a clear example of circumstances where the contractual relationship is not determinative is where "[the] contractual terms constitute a purely artificial arrangement which does not correspond with the economic and commercial reality of the transactions" – see *AirTours* at paragraph [49], referring to *Newey* at paragraph [45];

(4) however, purely artificial arrangements are just one example of circumstances where the contractual relationship does not reflect the economic and commercial reality of the arrangement. They are not the only example of such circumstances – see *U-Drive Limited v The Commissioners for Her Majesty's Revenue and Customs* [2017] UKUT 112 (TCC) ("*U-Drive*") at paragraph [36];

(5) in each case, regard must be had to all the circumstances in which the transaction or combination of transactions takes place – see *U-Drive* at paragraphs [32(4)] and [37] – and what is needed is a careful and sensitive analysis having regard to the economic and commercial reality of the transaction taken as a whole – see *AirTours* at paragraphs [44] to [46], citing the judgments of Lord Reed and Lord Hope in *The Commissioners for Her Majesty's Revenue and Customs v Aimia Coalition Loyalty UK Ltd [2013] UKSC 15 sub nom The Commissioners for Her Majesty's Revenue and Customs v Loyalty Management UK Ltd* [2013] STC 784 at paragraphs [66], [67] and [110] ("*Aimia*");

(6) it follows that each case is required to be determined in accordance with its own specific facts – see *AirTours* at paragraph [59], *Aimia* at paragraph [68] and *U-Drive* at paragraph [45];

(7) the mere fact that a person has paid the consideration for a supply does not mean that that that person has received the supply. The payer may simply have paid what has been described in various cases as "third party consideration" for a supply made to someone else – for example, because it is discharging an obligation owed to the recipient of the consideration or to a third party – see *Aimia* at paragraph [67], *WHA* at paragraphs [56] to [60] and *U-Drive* at paragraph [44]; and

(8) in analysing the relevant arrangement, the principle of fiscal neutrality should be borne in mind although that is not a fundamental principle or a rule of primary law but merely a principle of interpretation to be applied concurrently with, and as a limitation on, the strict interpretation of exemptions in the VAT legislation – see *AirTours* at paragraphs [52] and [53].

23. Given their relevance in terms of their facts to the issues which arise in relation to the Disputed Fuel Supplies, we should also refer at this point to two decisions of the Court of Justice of the European Union (the "CJEU") where the above principles were applied in the context of the use of fuel cards to pay for supplies of fuel – namely, *Auto Lease Holland BV v Bundesamt für Finanzen* (Case C-185/0) ("*Auto Lease Holland*") and *Vega International Car Transport and Logistic-Trading GmbH v Dyrektor Izby Skarbowej w Warszawie* (Case C-235/18) ("*Vega*"). In both of those cases:

(1) fuel had been provided to the holder of a fuel card (A) on the basis that another person – the lessor in the case of *Auto Lease Holland* and the parent company in the case of *Vega* – (B):

(a) had the primary obligation to the fuel supplier to discharge the debt arising from the fuel purchase; but

(b) did not have the right to decide when, where and how the fuel was supplied; and

(c) did not ultimately bear the cost of the fuel; and

(2) the CJEU declined to analyse the arrangement as involving a supply of fuel by the fuel supplier to B followed by an onward supply of fuel by B to A. Instead, it held that the supply of fuel had been made by the fuel supplier to A and that the only supply made by B to A had been a supply of credit – see *Auto Lease Holland* at paragraphs [31] to [37] and *Vega* at paragraphs [23] to [51].

THE EVIDENCE

Introduction

24. We were provided with evidence in the form of various documents and the witness statements and oral testimony of three witnesses – those being Mr Nuttall, Ms Trusca and one of the drivers of the trucks, a Mr George Featherbe.

The documentary evidence

25. The two most important documents with which we were provided were:

(1) a written contract between the Appellant and ROBO dated 3 January 2020 (the "ROBO Contract"); and

(2) a written contract between the Appellant and AS24 Fuel Card Limited ("AS24") dated 16 January 2016 pursuant to which all of the Disputed Fuel Supplies were made (the "AS24 Contract").

26. In addition, we were provided with various other documents relating to the Disputed Supplies which were, in our view, of slightly less significance to this decision.

The ROBO Contract

27. So far as the ROBO Contract was concerned, the evidence before us at the hearing, which was not challenged by either party, was that the ROBO Contract:

(1) had been intended to set out the terms of the pre-existing oral agreement between the parties to the contract;

(2) had been drafted in Romanian by Ms Trusca –whose first language is Romanian – without the assistance of legal professional advice, with the English version of the contract's being created by translating the Romanian version into English using Google Translate. Consequently, the contract was poorly drafted and the English version of the contract was not entirely reliable; and

(3) did not include a number of significant terms governing the relationship between the parties – most notably, the quantum of the fixed price per kilometre which the Appellant was required to pay to ROBO by way of the fixed payments.

28. The contract had no governing law clause. However, it was common ground that, as a contract for services other than one specified in Articles 4(1)(e), 4(1)(f) and 5 to 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 (the "Rome I Regulation"), which was not, in all the circumstances of the case, manifestly more connected with a country other than the country in which the service provider (ROBO) was habitually resident at the time when the contract was concluded, it should be regarded as being governed by the law of the latter country – which is to say, Romania – see *Dicey, Morris & Collins on the Conflict of Laws 16th Edition* at 33R–043.

29. That having been said, neither party sought to adduce any evidence as to the interpretation of the contract as a matter of Romanian law and we were asked to assume for the purposes of this decision that the construction of the contract under Romanian law would be the same as that under English law. We were happy to proceed on that basis because:

(1) there appeared to be no meaningful dispute between the parties as to the meaning of the language in the contract; and

(2) the deficiencies in the drafting of the contract referred to in paragraph 27 above meant that, in any event, the witness evidence was bound to play a more significant role than the provisions set out in the contract in ascertaining the terms of the agreement between the parties.

30. With that preamble, we noted that the main terms of the ROBO Contract relevant to this decision were as follows:

(1) the object of the contract was to deal with "trips for the transport of goods in different countries of the European Community" – see Article 1(1);

(2) the Appellant would "pay for all costs and charges associated with the vehicle including but not limited to: diesel, repairs, parts, maintenance, tolls, road tax etc." – see Article 1(1);

(3) the obligations of ROBO were:

(a) promptly to observe the instructions for loading, unloading and handling given to it by the Appellant; and

(b) to observe operational procedures which were either agreed by the parties or established by usage

– see Article 4(1); and

(4) the obligations of the Appellant were to "pay the transports in less than 30 days, to pay the diesel costs by recharge and pay the drivers" – see Article 4(2).

The AS24 Contract

31. In contrast to the ROBO Contract, the AS24 Contract clearly had been drafted by someone whose first language was English and who either had, or had access to, professional legal skills and was expressed to be governed by English law.

32. The main terms of the AS24 Contract relevant to this decision were as follows:

(1) the "Customer" was the Appellant, as the person who had executed the contract – see Clauses 1.12 and 2;

(2) a "User" was the Customer "and any person to whom Customer has entrusted the Card or authorised its use" – see Clause 1.32;

(3) within a reasonable time after the formation of the contract, AS24 would post the relevant number of cards and the related PINs to the Customer and, "[for] the avoidance of doubt, a Card number is referable to a particular Customer, not to a vehicle, User or otherwise" – see Clause 3.2;

(4) the Customer could issue a card to one or more Users "provided Customer remains exclusively responsible for the use and safe-keeping of that Card and its PIN and all Network Services received by using it" – see Clause 3.5;

(5) the Customer undertook that it would procure that all cards were kept in a safe place separate from their related PINs and take all necessary steps to prevent any unauthorised person from learning any PIN and the Customer agreed that it would be responsible for any transaction made with a card – see Clause 3.7;

(6) the Customer was obliged to notify AS24 of a lost or stolen card so that it could be stopped and the Customer would remain liable for the use of a stopped card in certain circumstances – see Clauses 5.2 and 5.3;

(7) AS24 would invoice the Customer periodically and the Customer would pay all invoices within 15 days – see Clauses 7 and 8;

(8) any claims in respect of defective fuel supplies had to be referred to AS24 within seven days of supply – see Clause 9; and

(9) the Customer could not "assign, transfer, charge or otherwise encumber, create any trust over or deal in any manner with the Contract or any right, benefit or interest under it nor transfer, novate (or sub-contract any of its obligations under it" [sic] – see Clause 13.

Other documentary evidence

33. In addition to the ROBO Contract and the AS24 Contract, we were provided with numerous receipts relating to the Disputed Supplies. Those receipts showed that the goods and services acquired pursuant to the Disputed Supplies had in each case been provided pursuant to a bilateral contract between the Appellant and the provider of the goods and services in question, to which ROBO was not itself a party and had been discharged by the Appellant. Since none of those features was in dispute between the parties and they do not advance the thinking in relation to the issue which is in dispute, we see no point in describing them here.

34. The only noteworthy features of the receipts were that they revealed that:

(1) the Appellant contracted for repairs and maintenance of ROBO's trucks in the same way as it contracted for repairs and maintenance of the Appellant's trailers; and

(2) in some cases, the Appellant acquired parts (such as tyres) to retain in its own warehouse as stock to use in repairing and maintaining ROBO's trucks and the vehicles of the Appellant's sub-contractors (as to which, see below).

35. The only other documents which we considered to be of note in relation to this decision were the invoices provided by ROBO to the Appellant for the fixed payments, which described the services provided by ROBO in return for the fixed payments as "Transport services".

The witness evidence

36. The evidence of Ms Trusca was as follows:

(1) having previously worked for another Romanian company owned by Mr Nuttall, she had formed ROBO in 2017. ROBO started carrying on its business in 2018 using trucks which it acquired from the Appellant;

(2) ROBO used its trucks to provide transport services to the Appellant;

(3) ROBO had in the past had a small number of other clients as well. On the rare occasions when a truck was used for a client other than the Appellant, ROBO did not compensate the Appellant for the fuel in the tank when the truck started to be used for the other client;

(4) Mr Nuttall would organise all the transport orders and handle all of the logistics associated with the deliveries and the trucks. Only he would decide where the drivers would refuel and how much fuel they could purchase with the AS24 cards and, except in cases where the work was insured and she had to co-ordinate the work with the insurer, it was up to him to decide when repairs and maintenance were carried out and the identity of the supplier;

(5) during the Relevant Periods, apart from the one or two drivers that ROBO provided to drive the trucks – for whose employment costs ROBO was reimbursed by the Appellant – and liaising with the insurers as described in paragraph 36(4) above, ROBO's only role was to pay the excluded costs – the insurance, the road tax and the goods vehicle operator's licensing fees – in respect of the trucks and receive the fixed payments;

(6) she had no idea how often Mr Nuttall spoke to the drivers or where the trucks were from time to time although, in theory, she could always discover where they were located at any time by using the GPS tracking system on the trucks;

(7) prior to Brexit, the Appellant paid for all of the fuel directly. Following Brexit, this changed so far as fuel in the EU was concerned. Instead of being paid directly by the Appellant, the cost of that fuel was paid by ROBO and reimbursed by the Appellant. However, no change was made so far as the cost of fuel in the UK was concerned. That cost continued to be borne directly by the Appellant;

(8) the fixed payments which the Appellant made to ROBO were increased following Brexit. This was because of increased insurance and road tax costs suffered by ROBO and not because of the change described in paragraph 36(7) above in the way that the cost of fuel in the EU was discharged; and

(9) sometimes when a truck was damaged or at the end of its life, ROBO would sell the truck to the Appellant.

37. The evidence of Mr Nuttall was as follows:

(1) the Appellant's business involved more than freight-forwarding. Its services included loading, unloading, storing and transporting goods, as well as arranging for customs and other paperwork. In addition, the Appellant sometimes used the stock of spare parts described in paragraph 34(2) above and paragraph 37(13) below to provide repairs and maintenance services to third parties;

(2) the Appellant did not own any of the trucks which it used to transport its trailers. Instead, Mr Nuttall said in his witness statement that the Appellant "[contracted] with other companies with trucks to provide 'traction' services to move the trailers, sometimes using drivers hired by [the Appellant] and sometimes with the traction company's own drivers". During the Relevant Periods, ROBO was the only traction company which the Appellant used for this purpose. The trucks owned by ROBO and used to provide the traction services had previously been owned by the Appellant. They were sold to ROBO in 2018 when the Appellant ceased to hold its own goods vehicle operator's licence;

(3) there were two reasons why the Appellant chose not to own its own trucks but instead to contract for traction services – one was that, as mentioned in paragraph 37(2) above, the Appellant had ceased to hold a goods vehicle operator's licence in 2018 and the other was that the arrangement provided the Appellant with greater flexibility and cost efficiency;

(4) it was his understanding that the agreement which the Appellant had reached with ROBO for the provision of traction services meant that the Appellant did not need to have its own goods vehicle operator's licence. Instead, it could rely on the fact that ROBO had such a licence;

(5) ROBO's trucks were never used for any purpose apart from the Appellant's business. They were always engaged in carrying goods for the Appellant and there was never an occasion when the trucks went back to ROBO so that ROBO could use them for other clients. Ms Trusca had been wrong to suggest that they had. On those occasions when, following Brexit, the trucks were used by the Appellant to carry goods for one of the Appellant's Romanian clients and it was thought to be more efficient for ROBO (instead of the Appellant) to bill the client in the first instance, ROBO had effectively done so on behalf of the Appellant and had accounted to the Appellant for the proceeds received from the client. He thought that Ms Trusca had confused those situations with the use of the truck by ROBO for clients other than the Appellant;

(6) the agreement which he had reached with Ms Trusca in relation to the traction services provided by ROBO was that:

(a) ROBO, as the owner of the trucks, would meet the excluded costs;

(b) the Appellant would make the fixed payments to ROBO; and

(c) the Appellant would discharge all of the costs associated with the use of the trucks (including the fuel, the repairs and maintenance and the drivers) apart from the excluded costs;

(7) subject to the point mentioned in paragraph 37(10) below, the Appellant met all of the fuel costs directly under the AS24 Contract;

(8) as the "Customer" under the AS24 Contract, the Appellant had access to cards entitling the holder to obtain fuel from AS24 and AS24's partners. The Appellant provided each of the drivers with a card which the relevant driver could then use to fill

up the trucks. However, the way in which this worked was that the Appellant would allocate the card to a particular truck as opposed to a particular driver (so that each AS24 card would remain with the truck no matter who was driving it, rather than being retained by the driver as he changed trucks);

(9) the Appellant exercised stringent control over the use of the cards and could put a stop on any card at any time. Drivers knew the parameters which applied to their use of the cards – for example, the need to purchase fuel in mainland Europe wherever possible because the cost of that fuel was cheaper than in the UK and the Appellant's preferred AS24 and AS24 partner stations both in the UK and in mainland Europe. Drivers knew that, subject to exceptional circumstances, they could not acquire more than 150 litres of fuel in the UK. In addition, the Appellant closely monitored the use of the cards so that it was aware of the ongoing fuel costs at all times. When purchasing fuel, the relevant driver would either have to enter the PIN before refuelling (at an unmanned station) or hand the card over to a member of staff at the station before refuelling for authorisation. AS24 would bill the Appellant periodically for the fuel purchased with the cards;

(10) one exception to the above – which was not really relevant to the Disputed Supplies – concerned supplies of fuel in the EU following Brexit. Since the Appellant was no longer able to benefit from a refund of the fuel duty associated with purchases of fuel in the EU after Brexit, that fuel was purchased by ROBO and then the Appellant reimbursed ROBO;

(11) subject to the point which is mentioned in paragraph 37(12) below, the Appellant also arranged, and directly met the costs of, the repairs and maintenance of the trucks. It held accounts with a number of suppliers and had an ongoing relationship with various others. In that way, it was able to obtain discounts and to manage the costs most efficiently. When a truck needed repairs or maintenance, the driver would report the issue to the Appellant and the Appellant would then direct when, where and how the work of repairs or maintenance would be carried out. In some cases, the work would be carried out at the Appellant's premises because the Appellant had access to parts and expertise (including its own employees). In order to meet the costs of repairing and maintaining the trucks more efficiently, the Appellant maintained a stock of spare parts (such as tyres, which the Appellant bought in bulk) at its warehouse which it then used to fit to the trucks as and when required;

(12) one exception to the above was where the repairs or maintenance work was to be covered by insurance. In that case, the cost of the repairs or maintenance would be met by the insurer and ROBO would deal directly with the insurer in relation to the work as ROBO was the insured party;

(13) the Appellant sometimes used its stock of spare parts to provide repairs and maintenance services to third parties, such as its sub-contractors;

(14) during the Relevant Periods, nearly all of the drivers were the Appellant's own employees and the Appellant remunerated them directly. However, some of the drivers – no more than two at any time during the Relevant Periods – were employed by ROBO and, in those cases, the Appellant reimbursed ROBO for the associated employment costs; and

(15) the consequence of the above arrangements was that the Appellant bore all of the risks, and benefited from all of the rewards, associated with running the trucks. Come what may, the Appellant continued to make fixed payments at the same fixed rate per

kilometre to ROBO for ROBO's services and that rate did not change if the costs of running the trucks increased or reduced.

38. The evidence of Mr Featherbe was as follows:

(1) he was a driver employed by the Appellant who had driven ROBO's trucks for around eight years;

(2) he would use the Appellant's AS24 card to purchase fuel. Generally, those purchases were pre-approved by Mr Nuttall, who was able to access the special card price for the fuel on-line, although there were occasions outside working hours when he would do so without prior approval because he knew from experience Mr Nuttall's parameters. For example, he knew that Mr Nuttall wanted purchases of fuel to be made in continental Europe as opposed to the UK so far as possible and he also knew which stations run by AS24 or its partners offered the most attractive rates; and

(3) if he thought that a truck needed repairs or maintenance, then he would call Mr Nuttall for instructions as to where and when the repairs or maintenance were to be carried out.

FINDINGS OF FACT

39. Subject to the one exception to which we refer in the paragraph which follows, the documentary and witness evidence summarised in paragraphs 24 to 38 above is entirely consistent and, accordingly, we find all of the matters described in those paragraphs to be facts for the purposes of this decision.

40. The one exception mentioned in paragraph 39 above concerns whether or not ROBO's trucks were ever used for a client of ROBO other than the Appellant. Ms Trusca said that they were so used, albeit rarely, whilst Mr Nuttall said that they were never so used. We prefer Mr Nuttall's evidence to Ms Trusca's on this point, because:

(1) it seemed to us that Mr Nuttall had at all times effective control over all aspects of the arrangement and that Ms Trusca's involvement in the arrangement was somewhat peripheral;

(2) Mr Nuttall provided us with a plausible explanation for Ms Trusca's confusion on the point – see paragraph 37(5) above; and

(3) the fact that the trucks were at all times solely carrying out deliveries for the Appellant was consistent with the fact that:

(a) Ms Trusca could not recall that any allowance for fuel was made when a truck containing fuel for which the Appellant had paid was used for another of ROBO's clients and it is hard to envisage that Mr Nuttall would have been willing to bear that cost without reimbursement;

(b) all of the trucks were purchased by ROBO from the Appellant; and

(c) some of the trucks which were damaged or came to the end of their lives were sold by ROBO to the Appellant.

Accordingly, we find as a fact for the purposes of this decision that, during the Relevant Periods, ROBO's trucks carried goods only on behalf of the Appellant and did not carry goods on behalf of clients of ROBO other than the Appellant.

THE PARTIES' SUBMISSIONS

Introduction

41. We have already set out in paragraphs 10 and 11 above a broad summary of each party's position but we now set out their positions in greater detail.

The Respondents' position

42. Mr Birkbeck and Mr Salmon submitted that, since:

(1) ROBO was at all times the owner of the trucks; and

(2) ROBO was contractually obliged to provide the Appellant with transport services, for which it required, in addition to drivers, both fuel and properly repaired and maintained trucks,

the recipient of the Disputed Supplies was, of necessity, ROBO and not the Appellant.

43. Applying the two-stage test set out in *AirTours* to the arrangement, it was quite clear that:

(1) as a matter of contract, ROBO had agreed to provide the Appellant with transport services and, as consideration for the transport services, the Appellant had agreed both to make the fixed payments to ROBO and to meet all of the costs associated with the running of the trucks (including the fuel, the repairs and maintenance and the drivers) but not the excluded costs; and

(2) that contractual analysis was entirely consistent with the economic and commercial reality of the arrangement in that it was ROBO which needed the fuel and the repairs and maintenance in order to provide the transport services to the Appellant whilst the Appellant, as consideration for those transport services, had to make the fixed payments to ROBO and meet the costs associated with running the trucks apart from the excluded costs. The fact that the Appellant did not have a goods vehicle operator's licence itself and was therefore precluded from operating the trucks itself demonstrated that the trucks must have been operated by ROBO and therefore that what ROBO had supplied to the Appellant must have been transport services and not simply access to the trucks.

44. It followed from this that there was no reason to depart from the contractual analysis in identifying the recipient of the Disputed Supplies. That recipient was ROBO as the person which owned the trucks and was providing the transport services.

45. When AS24 or one of its partners made the Disputed Fuel Supplies, the fuel in question was put into ROBO's trucks and immediately became the property of ROBO. As such, the goods supplied pursuant to the Disputed Fuel Supplies were very obviously supplied to ROBO. Similarly, when the repairs and maintenance providers made the Disputed R&M Supplies, the repairs and maintenance in question were carried out on ROBO's trucks. As such, both the goods and the services supplied pursuant to the Disputed R&M Supplies were very obviously supplied to ROBO.

46. Support for the above analysis could be seen in the fact that:

(1) it was the drivers of the trucks who used the AS24 cards and those drivers were the people carrying out the transport services for ROBO;

(2) the AS24 cards were allocated by the Appellant to the trucks which carried out the transport services for ROBO (in that each AS24 card would remain with the truck no matter who was driving it, rather than being retained by a driver as he changed trucks); and

(3) the repairs and maintenance were carried out on the trucks and it was the trucks which carried out the transport services for ROBO.

47. These made the link between the Disputed Supplies and the carrying out of the transport services abundantly clear and demonstrated that all of the Disputed Supplies were being used by ROBO in the course of ROBO's business of providing transport services to the Appellant. The supplies which the Appellant was using in the course of its business of supplying freight services were not the Disputed Supplies but rather ROBO's supplies of transport services.

48. The fact that the Appellant had control of when, where and how the Disputed Supplies were made and discharged the cost of the Disputed Supplies was not inconsistent with the proposition that the Disputed Supplies had been made to ROBO and did not change the analysis. The Disputed Supplies continued to have been made to ROBO and only to ROBO and the payments made by the Appellant were no more than third party consideration for those supplies. The Appellant had made those payments because of its pre-existing obligation to ROBO to do so, which obligation was part of the consideration given by the Appellant to ROBO for ROBO's supplies of transport services.

49. The fact that the obligation to meet the cost of the Disputed Supplies was part of the consideration given by the Appellant in return for ROBO's supplies of transport services did not mean that the Disputed Supplies were made to the Appellant. It merely meant that the cost of the Disputed Supplies was part of the cost to the Appellant of the supplies of transport services which it received from ROBO. As payments made pursuant to a pre-existing obligation owed to ROBO, the payments were no different from those made by the appellant in *U-Drive* – see *U-Drive* at paragraph [44].

50. Finally, refusing the Appellant's claim to recover the VAT input tax in respect of the Disputed Supplies pursuant to the above analysis did not offend against the principle of fiscal neutrality. The VAT input tax could have been recovered by ROBO because the Disputed Supplies were cost components of ROBO's zero-rated supplies of transport services to the Appellant. In contrast, the Disputed Supplies were not cost components of the Appellant's supplies of freight services. Instead, the only supplies which were cost components of the Appellant's supplies of freight services were the supplies of transport services made to the Appellant by ROBO – which supplies were zero-rated. In short, the Appellant was not in the same position as the scheme operator in *Aimia* where the payments made by the scheme operator to the redeemers were cost components of the supplies made by the scheme operator to the collectors – see *Aimia* at paragraphs [73] to [85].

The Appellant's position

51. Mr Vallat and Mr Stevens said that, on the contrary, both the contractual analysis and the economic and commercial reality of the arrangement demonstrated that it was the Appellant and not ROBO which was the recipient of the Disputed Supplies.

52. Starting with the contractual analysis, it was not correct to conclude that what the parties had agreed was that ROBO would provide transport services to the Appellant. In determining the terms of the contract between the parties, it was important to note that neither Mr Nuttall nor Ms Trusca was a lawyer or had taken legal professional advice and that they would not have attached any significance to the phrase "transport services". Instead, the terms of the deal they had reached was simply that the Appellant would continue to carry on its business – bearing all of the risks and rewards of so doing – but would do so by using ROBO's trucks. As such, the proper contractual analysis was that the Disputed Supplies had been made to the Appellant in the same way as if the Appellant had owned the trucks itself. The Respondents' approach involved placing too much weight on the phrase "transport

services", which was ultimately no more than a matter of labelling – see *Secret Hotels2* at paragraph [32].

53. Consistent with this approach, it was the Appellant and not ROBO which had been party to the AS24 Contract and the contracts with the repairs and maintenance providers. ROBO was not a party to those contracts. The Appellant needed access to the fuel and the repairs and maintenance, along with ROBO's trucks, in order to carry on its business and the Appellant both had control of when, where and how the relevant supplies were made and bore the cost of the relevant supplies. It was the Appellant and not ROBO that had the risks and rewards which arose out of the supplies.

54. The economic and commercial reality of the arrangement was entirely consistent with the contractual analysis described above. It was the Appellant which controlled the arrangements with the suppliers for obtaining those goods and services and which bore the risks and rewards arising out of requirements for fuel and repairs and maintenance. ROBO had neither an economic interest in those supplies nor any involvement in when, where or how they were made (with the sole exception of the repairs and maintenance that were covered by insurance).

55. The mere fact that the fuel supplied pursuant to the Disputed Fuel Supplies went into vehicles owned by ROBO and that the parts supplied pursuant to the Disputed R&M Supplies were installed in vehicles owned by ROBO did not mean that those supplies of goods were necessarily being made to ROBO and not the Appellant because it was the Appellant and not ROBO which had control of the installation of the goods in question and which gave the installation directions to the relevant supplier. The Appellant's position in that regard was no different from any other person who hired a vehicle and then obtained supplies of fuel or parts in order to run the vehicle during the period of hire. From the technical perspective, the fact that the fuel and parts were being installed at the direction of the Appellant meant that the supplier in question was transferring to the Appellant "the right to dispose of [the fuel or parts] as owner", within the meaning of Article 14(1) of the PVD and therefore the supply of goods was to be treated as being made to the Appellant – see *Auto Lease Holland* at paragraphs [31] to [37] and *Vega* at paragraphs [27] to [39].

56. Finally, allowing the Appellant to recover the VAT input tax in respect of the Disputed Supplies pursuant to the above analysis did not offend against the principle of fiscal neutrality. The costs incurred by the Appellant in acquiring goods and services pursuant to the Disputed Supplies were cost components of the Appellant's supplies to its customers. Accordingly, there was no loss of VAT in the VAT system as a result of that recovery.

DISCUSSION

Introduction

57. We have approached the question which is at issue in this appeal using the two stages of the test set out in *AirTours* – namely:

> (1) by examining the rights and obligations to which the arrangement gave rise as a matter of contract; and then
>
> (2) by considering whether, on a careful and sensitive analysis of the specific facts in this case, that contractual analysis accords with the economic and commercial reality of the arrangement.

The contractual analysis

58. Turning to the first of those questions, we think that it is clear beyond any doubt that, as a matter of contract, the agreement between the parties was that:

(1) ROBO would make supplies of transport services to the Appellant, as opposed to simply making its trucks available to the Appellant; and

(2) in return, the Appellant would make the fixed payments to ROBO and meet all of the costs associated with the running of the trucks (including the fuel, the repairs and maintenance and the drivers) but not the excluded costs.

In other words, we agree with the Respondents' contractual analysis.

59. The starting point in identifying the terms of the contract between the parties is inevitably the ROBO Contract, which purported to set out the terms of their agreement in written form. However, it is common ground that the ROBO Contract is not the end of the enquiry in determining the terms of the contract because:

(1) it did not set out a number of significant terms of the parties' agreement – most notably, the basis on which the quantum of the fixed payments which the Appellant had agreed to pay to ROBO was to be determined. Accordingly, it is reasonable to conclude that the parties did not agree or intend that the ROBO Contract contained all the terms of their agreement; and

(2) both Mr Nuttall and Ms Trusca testified that at least two of the terms of the ROBO Contract were inconsistent with what the parties had actually agreed when the ROBO Contract was executed. For example:

(a) Article 1(1) of the ROBO Contract specified that the Appellant would be responsible for "all costs and charges associated with the [trucks]", including road tax and both Mr Nuttall and Ms Trusca testified that that the Appellant was never intended to be responsible for, and did not in fact meet, the excluded costs, one category of which was road tax; and

(b) Article 4(2.1) of the ROBO Contract referred to the Appellant's paying the fuel costs "by re-charge" and to the Appellant's paying the drivers whereas both Mr Nuttall and Ms Trusca testified that, at least so far as fuel costs in the UK were concerned, they had agreed that the Appellant would discharge those costs directly and not by way of re-charge and that, so far as the drivers were concerned, the Appellant would pay its own drivers directly but would pay for the limited number of drivers provided by ROBO by way of re-charge.

60. It follows that the "parol evidence rule" – which generally precludes the admission of extrinsic evidence in construing the terms of an agreement that has been reduced to writing – does not prevent the evidence provided by Mr Nuttall and Ms Trusca of the terms of their agreement from being taken into account in this context – see *Chitty on Contracts Thirty-Sixth Edition* ("*Chitty*") at paragraphs 16-022 to 16-027.

61. In addition, we have already observed in paragraph 27(2) above that the English version of the ROBO Contract was prepared by Ms Trusca using Google Translate without the assistance of a legally-trained professional and was poorly-drafted. It follows that, in construing the terms of the ROBO Contract, it is appropriate to avoid an approach which is overly-literal or which is driven by semantic niceties – see *Chitty* at paragraphs 16-088 to 16-092.

62. Taking the above principles into account, there are five reasons why we have concluded that ROBO's contractual obligation under the agreement between ROBO and the Appellant was to make supplies of transport services to the Appellant, as opposed to simply making its trucks available to the Appellant. They are as follows:

(1) the ROBO Contract provided in Article 1(1) that ROBO's obligation was to provide "trips for transport" and referred in Article 4(2.1) to the fixed payments as "the transports". In both cases, the language used was more consistent with the proposition that what ROBO had agreed to provide to the Appellant was transport services than the proposition that what ROBO had agreed to provide to the Appellant was simply the use of its trucks;

(2) in Article 4(1) of the ROBO Contract, ROBO agreed promptly to observe the orders for loading, unloading and handling given to it by the Appellant and to observe "the operational procedures, whether established by usage or agreed upon". Again, that is more consistent with the proposition that what ROBO had agreed to provide to the Appellant was transport services than the proposition that what ROBO had agreed to provide to the Appellant was simply the use of its trucks;

(3) bearing in mind the points made in paragraphs 59 to 61 above about the extent to which oral evidence is admissible in determining the terms of a contract which is in written form, the language in the ROBO Contract is entirely consistent with the testimony of Mr Nuttall and Ms Trusca, the individuals who entered into the contract on behalf of the Appellant and ROBO. Mr Nuttall said repeatedly, in both his witness statement and his oral testimony, that the agreement between the parties was that ROBO would provide "traction services" to the Appellant. Ms Trusca's testimony was to the same effect – she said in her witness statement that ROBO used its trucks to provide "transport services" to the Appellant and, at the hearing, she confirmed that ROBO was not simply making its trucks available to the Appellant but instead using its own goods vehicle operator's licence to provide transport services to the Appellant;

(4) the invoices provided by ROBO to the Appellant in respect of the Relevant Periods specified that the fixed payments set out in the invoices were for "Transport services" provided by ROBO to the Appellant; and

(5) leaving aside the economic and commercial reality of the arrangement into which the Appellant and ROBO entered – which we address in the next section of this decision – and what impact that economic and commercial reality might have meant in terms of the Appellant's not being in breach of the goods vehicle operator's licensing system – which is not part of our remit – it is clear from the evidence with which we were presented that, at the time when they entered into the contract on behalf of their respective companies, both Mr Nuttall and Ms Trusca:

> (a) were aware of the fact that the Appellant did not have a goods vehicle operator's licence;
>
> (b) intended their arrangement to have the effect of enabling the Appellant to continue to provide freight services to its clients without breaching the goods vehicle operator's licensing system; and
>
> (c) considered that avoiding any such breach required the Appellant to sub-contract the transport element of those freight services to ROBO and not merely to use trucks made available to it by ROBO to carry out its own transport activities.

Consequently, the purpose of the parties in entering into the contract was clearly that ROBO would provide transport services to the Appellant and not merely make its trucks available to the Appellant, so that the Appellant could take advantage of ROBO's goods vehicle operator's licence.

63. It follows from the above that we prefer the Respondents' contractual analysis to the contractual analysis proposed by the Appellant. On this contractual analysis, when the Appellant entered into the AS24 Contract and the contracts with the repairs and maintenance providers, even though each of those contracts was entered into by the Appellant and the relevant provider of goods or services on a bilateral basis and ROBO was not a party to the relevant contract, the terms of the relevant contract were such that the Appellant was contracting with the provider in question not to provide goods or services to the Appellant itself but instead to provide goods or services to ROBO on terms that the Appellant would meet the cost of those goods or services.

The economic and commercial reality

64. However, before using that contractual analysis to identify the recipient of the Disputed Supplies, we need to move on to the second stage of the test set out in *AirTours* and consider whether, on a careful and sensitive analysis of the specific facts in this case, that contractual analysis accorded with the economic and commercial reality of the arrangement.

65. It is at this point that we part company with the Respondents and prefer the Appellant's analysis of the position.

66. It is true that, if one were to adopt a highly convoluted, artificial and, in our view, unrealistic approach to the arrangement, it might be possible to say that the economic and commercial reality of the arrangement was consistent with the contractual analysis. After all, it is common ground that the trucks continued to be owned by ROBO throughout the Relevant Periods. We can therefore understand how it might be possible to construct an argument to the effect that:

(1) ROBO, and ROBO alone, operated the trucks throughout those periods and received the supplies of fuel and repairs and maintenance that were necessary in order for the trucks to conduct those operations;

(2) ROBO's operation of the trucks meant that it was providing transport services to the Appellant; and

(3) the discharge by the Appellant of all of the costs associated with operating the trucks – apart from the excluded costs – was simply part of the consideration given by the Appellant to ROBO in return for the transport services provided to it by ROBO.

67. However, in our view, taking into account all of the facts in this case, that was not the economic and commercial reality of the arrangement at all. On the contrary, that economic and commercial reality was that ROBO made its trucks available to the Appellant in return for the fixed payments and on the basis that the Appellant would continue to use the trucks in the course of its business in exactly the same way as it was doing before the arrangement with ROBO began (and would have continued to do if it had continued to own the trucks and have its own goods vehicle operator's licence.)

68. We say that for various reasons, as follows:

(1) first, it was Mr Nuttall, and not Ms Trusca, who made all the decisions in relation to the operation of the trucks and the journeys which they made. He was the person who decided when, where and how the fuel for the vehicles would be purchased and when, where and how the vehicles would be repaired and maintained;

(2) it was to Mr Nuttall and not Ms Trusca that the drivers, almost all of whom were the Appellant's employees, looked for instructions in relation to those matters;

(3) Mr Nuttall and his colleagues at the Appellant's head office knew exactly where the trucks were from time to time. The same was not true of Ms Trusca. Whilst Ms

Trusca would have been able to discover the location of the trucks at a particular time using GPS if she had wanted to, that was not something that she was doing because, in reality, ROBO was not, in fact, providing transport services. Instead, ROBO was simply making its trucks available to the Appellant (in return for the fixed payments from the Appellant) so that the Appellant could use the trucks in the course of its business;

(4) when it came to repairs and maintenance, the Appellant contracted for repairs and maintenance of ROBO's trucks in the same way as it contracted for repairs and maintenance of the Appellant's trailers; and

(5) all of the trucks owned by ROBO were purchased by ROBO from the Appellant at the start of the arrangement and, when some of the trucks were damaged or reached the end of their useful lives, they were transferred by ROBO to the Appellant.

69. It follows from this that, in our view, the economic and commercial reality of the arrangement between the Appellant and ROBO was very clearly that the Appellant continued to carry on its business using the trucks in the same way as it had done when it had held a goods vehicle operator's licence and owned the trucks itself. The only differences were that the Appellant:

(1) did not own the trucks;

(2) was not responsible for the excluded costs; and

(3) was obliged to make the fixed payments to ROBO in return for obtaining access to the trucks.

70. In our view, in order for the Respondents' analysis of the economic and commercial reality to be at all sustainable, there would have had to have been a much greater engagement by ROBO in the matters comprising the transport activities. We do not see how ROBO can realistically be said to have provided transport services when all it did was make its trucks available to the Appellant and take no responsibility for, or interest in, the way in which the trucks were then used.

71. It is no part of our role to consider how the economic and commercial reality of the arrangement we have described above might have meant that the Appellant was in breach of the goods vehicle operator's licencing system and we therefore do not address that question in this decision.

The impact of the economic and commercial reality

72. The conclusion set out above means that the authorities on which Mr Birkbeck and Mr Salmon relied to demonstrate that the amounts paid by the Appellant in respect of the Disputed Supplies were third party consideration are of no relevance in this case. It is plain that it was the Appellant and not ROBO which received the Disputed Supplies. It was not a case where those supplies were made to ROBO and the Appellant simply met the cost of the supplies.

73. That conclusion is supported by the fact that it was the Appellant and not ROBO which:

(1) was party to the AS24 Contract and the repairs and maintenance contracts;

(2) was in control of when, where and how the relevant goods and services were supplied;

(3) bore the costs of those supplies; and

(4) benefited from those supplies because it needed the goods and services so provided in order to carry on its business of providing freight services.

74. In bearing all of the risks and rewards which flowed from the relevant supplies, the Appellant was in exactly the same position as the card holders in *Auto Lease Holland* and *Vega* when they made purchases of fuel – see *Auto Lease Holland* at paragraphs [31] to [37] and *Vega* at paragraphs [27] to [39].

75. It follows from the above that it is the Appellant and not ROBO which was entitled to claim a credit for the VAT input tax attributable to the relevant supplies.

76. We should add that the above analysis is not changed simply because the goods supplied pursuant to the Disputed Supplies – namely, the fuel and the parts provided during the provision of repairs and maintenance – were installed in vehicles owned by ROBO. As the CJEU noted in *Vega* at paragraph [27], "the concept of a 'supply of goods' … does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law, but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were its owner". In this case, the economic and commercial reality was that the suppliers in question empowered the Appellant to dispose of the relevant goods as if the Appellant were the owner and the supplies of goods were accordingly made to the Appellant. In this respect too, the Appellant was in the same position as the card holders in *Auto Lease Holland* and *Vega* – see *Auto Lease Holland* at paragraphs [31] to [37] and *Vega* at paragraphs [27] to [39].

77. Finally, we would observe that the above conclusion does not offend against the principle of fiscal neutrality. The costs incurred by the Appellant in acquiring goods and services pursuant to the Disputed Supplies were cost components of the Appellant's supplies to its customers. Accordingly, its ability to claim a credit for the VAT input tax attaching to the Disputed Supplies does not lead to a loss of VAT in the VAT system.

DISPOSITION

78. We therefore uphold the Appellant's appeal.

79. We think that it is worth adding that, in our view, the Appellant may be considered to be somewhat fortunate in having prevailed in this dispute. After entering into a contractual relationship with ROBO which bore no relationship to the economic and commercial reality of the arrangement between them, it would not have been entirely unfair for the Appellant to have suffered the adverse VAT consequences that were a natural concomitant of that contractual relationship.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

80. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Release Date: 16th DECEMBER 2025