



## Press Summary

11 September 2025

### **The Prudential Assurance Company Ltd (Appellant) v Commissioners for His Majesty’s Revenue and Customs (Respondent)**

**[2025] UKSC 34**

*On appeal from [2024] EWCA Civ 300*

**Justices:** Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Stephens, Lady Rose, Lord Richards and Lady Simler

#### **Background to the Appeal**

This appeal concerns the relationship between section 43 of the Value Added Tax Act 1994 (“VATA”), which lays down rules in respect of value added tax (“VAT”) groups, and the provisions (both domestic and European) that deal with the time at which certain services performed by one company for another are to be treated as “supplied” for VAT purposes.

Section 43 allows companies in the same corporate group to choose to be treated for VAT purposes as a single entity. When one member of a VAT grouping supplies goods or services to another member of the same group, they do not have to charge VAT for that supply. That is because section 43 states that where companies form a VAT group “any supply of goods or services by a member of the group to another member of the group shall be disregarded”. The question is how this applies when, between the time the services were performed and the time the VAT invoice for those services is issued or paid, the supplier leaves the VAT group. Is the position that VAT does not need to be charged, because at the time of supply the supplier was still a member of the same group? Or is the position that VAT should be charged because the invoice was issued and payment received after the supplier has left the group? This depends on the time of supply rules (“TOSR”), which are set out in Title VI of the Principal VAT Directive (“PVD”), and implemented in the UK in part by provisions in the VATA, and in part by regulation 90 of the Value Added Tax Regulations 1995 (SI 1995/2518) (the “**1995 VAT Regulations**”).

Generally, section 6 of VATA states that the liability to charge VAT arises at the time the services are performed. However, there are exceptions, and regulation 90 of the 1995 VAT Regulations allows for a situation where services are supplied over a period, and the whole or part of the payment is made periodically or from time to time. When this happens, the “supply”

is treated as occurring separately at the time either when the supplier issues a VAT invoice, or when payment is received.

In this case, a company called Silverfleet performed investment fund management services for the appellant (“**Prudential**”) when they were both members of the same VAT group. There is no dispute that at the time the services were actually performed and when Prudential paid the quarterly management fees to Silverfleet the supplies were disregarded for VAT purposes pursuant to section 43 of VATA. However, many years after Silverfleet had stopped managing the funds for Prudential and left the VAT group, a success fee became due because the value of the funds exceeded a threshold fixed in the services contract between Silverfleet and Prudential. The issue raised by this appeal is whether in these circumstances VAT is payable on the success fee because at the time Silverfleet invoiced Prudential for the success fee they were no longer in the same group; or whether because the fee arose out of the services that were all performed whilst they were in the group, it is not subject to VAT.

The First-tier Tribunal allowed Prudential’s appeal against HMRC’s assessment and held that that no VAT was payable. The Upper Tribunal and Court of Appeal (by majority) held the opposite, deciding that VAT was payable.

Prudential now appeals to the Supreme Court.

## **Judgment**

The Supreme Court unanimously dismisses this appeal. Lady Rose and Lady Simler give the judgment, with which Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Stephens and Lord Richards agree.

## **Reasons for the Judgment**

Section 43 is not a complete code, and the purpose of the VAT grouping provisions is to promote organisational fiscal neutrality between corporate groups. Section 43 must be read alongside section 6 of VATA and regulation 90 of the 1995 VAT Regulations. There is no basis for inferring a separate rule for VAT groups that depends on when the services were actually performed ([73] - [76]). The Court of Appeal majority was accordingly correct to apply regulation 90(1) of the 1995 VAT Regulations to determine the time of supply ([77] – [79]).

Next, when considering its wording and scope, regulation 90 clearly applies to the facts of the present case ([93] – [97]). The effect of this is that the time of the supply of Silverfleet’s services to Prudential is modified by the invoicing for the success fees so that the services are deemed to have been supplied at the time of that invoice.

It is necessary then to consider whether that domestic wording is consistent with the regime set up by articles 64 and 66 of the PVD. There is an important distinction in the PVD between the event giving rise to VAT (the “**chargeable event**”), and when VAT can in fact be collected by the tax authority. The court rejects HMRC’s argument that article 66 allows the member states to change the time at which the chargeable event occurs as well as the time at which the VAT arising can be collected. [101] Article 66 PVD gives member states the option to postpone the date of collection to the date of invoice or payment but that does not affect the timing of the chargeable event. The occurrence of the chargeable event is set by article 64.

The court also therefore accepts Prudential’s submission that HMRC must show that there was a chargeable event after Silverfleet left the VAT group, not just that the obligation to pay the VAT occurred after that date. The case therefore turns on whether article 64 applies to change

the chargeable event so that the supply of the services by Silverfleet is treated as occurring when the invoice for the success fee was issued or paid.

Article 64 requires and permits member states to modify the moment at which the chargeable event creating the charge to VAT occurs in the case of goods or services which give rise to “successive payments”. Where article 64 applies, the chargeable event for those supplies occurs at the end of the period to which the payment relates. The payment of the success fee by Prudential to Silverfleet was a “successive payment” within the meaning of article 64 ([114]). It related to a period which expired either at the time when the performance of the services was completed or at a time when the thresholds which triggered the success fees were met. If the latter, then clearly that date was a date on which Prudential and Silverfleet were no longer in the same VAT group. Even if the former, neither section 43 nor its predecessor section 29 of VATA 1983 override article 64 by requiring Member States to ignore a provision of services which actually took place even though within the same VAT group if the effect of a “successive payment” changes the timing of the chargeable event. In such circumstances, HMRC are not required to treat the success fees as, in effect, a gratuitous payment because the parties were within the same VAT group at the time the services were performed ([88]).

It is true that the Court of Justice of the European Union has construed article 64 restrictively to make clear that parties cannot postpone the chargeable event arising from the supply of services simply by postponing the receipt of payment for the services ([150]). But the case law does not limit the application of article 64 so that it *only* applies where the payment is made whilst the performance of the services is ongoing at the moment of payment or where the date on which the services are performed is unclear. Rather, it has held that article 64 applies where the payment relates to “supplies the nature of which justify payment in instalments” ([129] – [138]). This can include where any payment for the goods or services is uncertain or contingent at the time the performance of the services is completed, and where the “successive payment” comprises that element of the payment which crystallises only once the uncertainty or contingency is resolved ([141] – [147]). If a narrower interpretation of article 64 were adopted, it could result in the undesirable consequence of suppliers being required to charge and account for VAT at the time the services are performed despite not knowing whether or when the later remuneration will become payable or how much that will be ([148]).

The success fee must therefore be regarded as a “successive payment” which relates to the earlier supply so that the supply is only regarded as being completed at the end of the period to which the payment relates ([152]). Here, the chargeable event which gave rise to the success fees occurred after Silverfleet had left the VAT group ([153]). Silverfleet was therefore correct to add VAT to its invoice for the success fees earned several years after it had completed its performance of the investment fund management services to Prudential ([156] – [157]).

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**