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## VAT on disbursements - update

9 January 2018

Members will be aware of the First-tier Tax Tribunal decision in [Brabners LPP v HMRC](#) in which the Tribunal concluded that the act of obtaining electronic property searches from a search agent formed part of the overall service provided by a firm to its client on the basis that the searches enable the solicitor to advise and therefore, the fees for those searches could not be treated as disbursements for VAT purposes.

In its judgment the Tribunal also went further than HMRC's own guidance in concluding that electronic searches could not be treated as disbursements even where the solicitor had not made use of search report to advise the client.

While the decision of the First-tier Tribunal is not binding on any other tribunal or court, the decision has resulted in uncertainty for members and search providers who are seeking clarity on the correct VAT treatment of electronic property searches.

In order to address this in a meaningful way which takes into account the views of our members, the Society is establishing a working group to assist in providing updated guidance to the profession in respect of the VAT treatment of disbursements. In the meantime, in the absence of any binding adjudicated decision on the subject, we suggest that firms follow HMRC's published [guidance](#) on the treatment of searches.

If any firm has been contacted by HMRC regarding historic VAT searches, the Law Society would be interested to hear from you, in particular if the firm's practice was to pass on the search to the client, so satisfying the second of the eight conditions set out in HMRC's VAT Notice 700 for treating a payment to a third party as a disbursement. Please email – [lauren.rabaiotti@lawsociety.org.uk](mailto:lauren.rabaiotti@lawsociety.org.uk).

18 September 2017

A First-Tier Tribunal (Tax Chamber) decision has assessed a firm as liable to pay VAT on search fees charged to it by a third party search agency.

The decision in [Brabners LLP and the HMRC Commissioners](#) concerned whether such search fees could be considered a disbursement and whether VAT should have been charged to clients. In the introduction to the decision, the judge makes plain that the issue was the interpretation of the law and not tax evasion, avoidance or misconduct.

The tribunal agreed with HMRC that such searches were part of the overall services provided to a client by a solicitor and enabled the solicitor to provide conveyancing services to the client. Payments for searches were

therefore part of the overall consideration for that service.

The agency conducting the electronic searches had (until 2017) invoiced the firm for the cost of the search without the addition of VAT; the firm had passed on that charge to clients as repayment of expenditure incurred in the name and on behalf of the client. The position on local authority searches has changed since HMRC has required local authorities to charge VAT on CON 29 and CON29O searches since 1 January 2017 if they were able to do so at that date, and from not later than 31 March 2017.

The Law Society intervened in the case through written submissions. The tribunal accepted that HMRC had historically made the concession that postal searches were to be treated as a disbursement, but did not accept the Law Society's argument that no distinction could be made between postal and electronic searches.

The decision appears to be at odds with that in *Barratt, Goff and Tomlinson (A firm) v HMRC (Law Society intervening)* [2011] UKFTT 71 (TC). In *Barratt* the tribunal came to a different decision when considering the fees paid by medical records and reports in connection with personal injury claims. In the *Brabners case*, the tribunal made the distinction from *Barratt* that medical records were confidential while property records are public.

The Law Society is considering the implications of the decision for its [practice note on VAT and disbursements](#).