VAT Voice©

The bi-monthly newsletter of VAT Advisers Limited

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VAT ADVISERS LTD TO AUTHOR VAT PART OF 'BUSY PRACTITIONER'

We are pleased to announce that VAT Advisers Ltd has recently been appointed by Bloomsbury Professional Publishing (previously Tottel Publishing) to author the VAT section of its popular 'Busy Practitioner' publication, beginning with the March-April edition.

As you might imagine, the publication is primarily intended for accountants and tax advisers, and is a means of keeping busy professionals up to speed on the latest tax, NI, and VAT issues. The cost of the publication is £102.00 per year, and is delivered in 6 bi-monthly issues. Further details can be obtained by following the link below:

http://www.tottelpublishing.com/468/Bloomsbury-Professional-Busy-Practitioner.html

REMEMBER TO PUT YOUR SUPPLIES OF REVERSE CHARGE SERVICES ON AN EC SALES LIST!

As was heralded in the previous edition of VAT Voice, the EU 'VAT Package' arrived on 1 January 2010. With its arrival came the requirement for supplies of intra-EU reverse charge services to be included on an EC Sales List ('ESL').

Under the new 'general rule' for determining the place of supply of 'B2B' services, the long-established list of reverse charge services such as advertising, accounting, consultancy, hire of staff, and electronically supplied services, will be joined by other services such as work on goods, and intermediary services (remember that 'B2C' supplies will have different place of supply rules). The impact of this is that businesses such as accountants, solicitors, PR firms, business consultants, online suppliers of digitised music and games, and even VAT advisers(!), will now have to consider ESLs when dealing with EU business customers.

From 1 January 2010, any service which is reverse chargeable under the new 'general rule' will have to go on an ESL. Note that the reverse charge services must **not** be entered in box 8 of the VAT return, which continues to be only for intra-EU supplies of goods. Without the use of box 8, an initial ESL will not be automatically sent by HMRC, so the first one will either have to be submitted through the online service for ESLs, downloaded from HMRC's website or requested from the NAS (0845 010 9000). However, once the first ESL is submitted, future ones will then be sent automatically.

The time limit for submitting paper ESLs has reduced to 14 days from the end of the reporting period, but online submissions will get 21 days ('nil' returns need not be sent, however). ESLs submitted for just services will be required quarterly, but can be submitted monthly if so preferred. ESLs submitted for goods will be required monthly if related turnover is above £70,000 per quarter (reducing to £35,000 per quarter from 1 January 2012). If a business is supplying goods and services, they can be included on the same ESL, but 'Indicator Code 3' must be used to identify the services. Where the level of goods turnover is below £70,000 per quarter, quarterly ESLs can be used to declare both goods and services. However, if the £70,000 limit is exceeded requiring monthly returns, HMRC suggest that months 1 and 2 are used to declare just goods, with month 3 used to declare goods **and** the services for the whole quarter.

Latest VAT News

REVENUE & CUSTOMS BRIEF 68/09

VAT: Return of standard rate to 17.5 per cent on 1 January 2010 - measures to help business
This gives details of the two measures designed to help businesses return to the 17.5% standard rate. It also includes details of the consultation carried out by the Department for Business, Innovation & Skills (BIS) on a proposal to amend the Price Marking Order 2004.

HMRC says the 1.1.10 date of the change may cause problems for certain businesses at a particularly busy time of year, so the following two measures are being introduced:

- special accounting arrangements for businesses operating beyond midnight on 31 December 2009
- the 'light touch' to be operated by HMRC audit staff in dealing with errors arising out of the rate change

1. Special accounting arrangements for businesses operating past midnight on 31.12.09

Retailers
As is normal with a VAT rate change, the return to 17.5% will be effective from midnight on 31 December. However, for certain businesses operating after midnight, dealing with such a clear cut-off point may be difficult. For example, it's impractical for a club or hotel hosting a New Year's Eve party to stop serving customers at midnight in order to adjust the tills to 17.5% VAT and amend prices accordingly.

In order to assist businesses in this position, HMRC will allow them to account for VAT at 15% on takings received up to the earlier of:

- the end of trading of the 31 December session or
- 6am on the morning of 1 January 2010

The treatment is subject to the following conditions:

- It is restricted to those businesses open at midnight on 31 December 2009 that account for VAT at the point of sale, such as businesses on a retail scheme - pubs, shops, restaurants etc. It will not apply to:
    - mail order or on-line retailers;
    - businesses that account for VAT on the basis of VAT invoices issued; or
    - pre-payments for supplies of goods or services to be provided after 6am on 1 January 2010
- It will not apply to coin-operated or similar machines (e.g. vending, amusement or gaming machines). In these cases, businesses must follow the normal rate change rules as set out in para 10.1 of HMRC's detailed rate change guidance, and account for VAT based on the date of use of the machine, or by apportionment if the machine does not record the date
- It will not apply to transactions made after midnight on 31 December that would have been caught by the anti-forestalling legislation if made before midnight. Such supplies will be liable to VAT at 17.5%.
- HMRC may withdraw or restrict the use of this treatment in individual cases.

Telecommunications Providers
As the time around midnight on New Year's Eve are usually the busiest time of year for voice calls and text messages, it may be difficult for telecoms providers to change their accounting and billing systems for the rate change. As such, HMRC will allow VAT to be charged at 15% on voice calls and text messages that take place and are billed up to 6am on 1 January 2010.

Latest VAT News (continued 1)

2. The 'Light Touch'

HMRC says the following guidance has been given to VAT Officers about the approach to adopt in relation to errors discovered in relation to the rate change:-

What if businesses make mistakes implementing the change of rate (light touch)?

- *HMRC wants to encourage and assist businesses as they make the changes necessary to deal with the change in the standard rate.*

If a business discovers that it has made material mistakes, it should correct them through the normal error correction process.

- *HMRC will however be operating a 'light touch' in terms of errors made in the first VAT return after the change (where the error relates to a change of rate issue). This means that in our audit plans we will not target change of rate errors that are unlikely to lead to any material net revenue loss. And if we find errors which relate to a change of rate issue we will not seek an adjustment unless we have reason to suppose that there is an overall revenue loss.*
- *For example, consider a fully taxable business which supplies standard-rated goods to a fully taxable customer and incorrectly charges 15 per cent rather than 17.5 per cent. As the detailed guidance makes clear, the customer should treat only 15 per cent of the tax exclusive (net) price as input tax. If the customer does this there will be no overall loss of tax. When auditing the supplier, HMRC will assume that the purchaser has followed the accounting documents unless there is good reason to suppose otherwise.*
- *However, if the supply is or may be to a customer who is not able to recover VAT in full, then there is likely to be an overall loss of tax and HMRC will seek to adjust (issue an assessment) in the normal way.*
- *In situations where HMRC do need to adjust (and issue an assessment) we will take into account the difficulties the business has faced in adjusting to the change in considering whether penalties apply.*

BIS Consultation on proposal to amend the Price Marking Order 2004

HMRC say traders are required to display clearly their prices inclusive of VAT. For a period up to 14 days, they are permitted under the Price Marking Order 2004 to let consumers know, by way of a general notice, that a price adjustment for the VAT rate change, will be made at the till.

HMRC says BIS is consulting on a proposal to extend the period that traders can display a general notice, from 14 days to 28 days.

REVENUE & CUSTOMS BRIEF 70/09

'Electronic lottery terminals' - liability to VAT & Amusement Machine Licence Duty (AMLD)
This Brief is an HMRC policy statement on amusement machines known as 'electronic lottery terminals', and their liability to VAT and Amusement Machine Licence Duty (AMLD).

It says HMRC is aware that certain gaming machines are being marketed as 'electronic lottery terminals'. Manufacturers argue that the product constitutes a lottery that is exempt from VAT and lottery duty, and outside the scope of AMLD. HMRC say they reject this, as the 'electronic lottery terminals' are completely different from the lottery ticket dispensers or vending machines typically found in members' clubs.

HMRC says some of the machines being marketed as 'electronic lottery terminals' are actually gaming machines, as they fall within the definitions of a gaming machine set out in section 23 of the VAT Act 1994 and s25 of the Betting and Gaming Duties Act 1981. This issue is important as gaming machine income is standard-rated for VAT purposes, and depending on stake and prize limits, gaming machines are liable to AMLD.

HMRC's policy is that VAT is due on any income received from an 'electronic lottery terminal', and if an 'electronic lottery terminal' is provided on any premises, a valid AMLD

licence must be held before making the machine available unless the machine falls within any of the exemptions.

If an 'electronic lottery terminal' which is liable to AMLD has been operated without a licence, the following action should be taken:

- apply for a licence to cover future provision of the gaming machine for play
- include a voluntary declaration that you have provided a gaming machine for play without holding a valid licence for a specified period

The licence application forms should be sent to *HMRC Banking, St Mungo's Road, Cumbernauld, Glasgow G70 5WY,* with a letter stating the period for which a valid licence was not held. A voluntary declaration will avoid a penalty being imposed for the period without a licence, and HMRC may issue a default licence and assessment for the unpaid duty. The licence application forms can be downloaded from the HMRC website.

The Brief advises that if there has been an undeclaration of VAT, it can be adjusted for on the current VAT return unless the net error exceeds the voluntary disclosure limits.

HMRC says that where a business is unsure if its 'electronic lottery terminal' is a gaming machine, it should ring the VAT Helpline (0845 010 9000) with details of the game before making the machine available for play. If a business disagrees that its 'electronic lottery terminal' is a gaming machine, but takes out an AMLD licence for the machine, it will not be able to appeal. So, businesses which disagree should contact HMRC on the VAT Helpline prior to licensing. If HMRC thinks its 'electronic lottery terminal' is a licensable machine, it will issue a default licence and assess for the outstanding duty and VAT. The business can then challenge the decision and ask for its appeal to be heard by an independent tribunal.

REVENUE & CUSTOMS BRIEF 74/09

Changes to the Tour Operators' Margin Scheme: transitional provisions

In R&CB 27/09, HMRC detailed changes to the Tour Operators' Margin Scheme (TOMS) taking effect from 1 January 2010. This Brief sets out transitional arrangements in relation to supplies that straddle this date.

The Brief says the TOMS is a mandatory scheme for supplies made *'for the direct benefit of the traveller'* (i.e. the end customer). However, the UK has allowed businesses to opt out of the TOMS for supplies to business customers for their own consumption, which enables those customers to recover input tax. The UK has also allowed businesses to treat supplies to other tour operators for onward resale as TOMS supplies. As announced in R&CB 27/09, both of these concessions are withdrawn with effect from 1 January 2010. The transitional arrangements are designed to ensure that VAT is correctly accounted for on supplies that straddle this date.

<u>Effect of 'opt-out' removal</u>

Removing the opt-out means that TOMS rules must apply to supplies of designated travel services made after 1 January 2010. As the normal rules apply before that date, tour operators can recover VAT on supplies of goods or services received before 1 January 2010 for supplies being made for the direct benefit of the traveller after that date. The law withdrawing the opt-out provides that supplies on which input tax is recovered cannot be included in the margin calculation for supplies being accounted for under the TOMS.

Equally, tour operators using the opt-out should account for VAT under the normal rules if a VAT invoice is issued or a payment is received before 1 January 2010 for supplies of travel services to another taxable person. So the selling price feeding into box 2 of the provisional calculation and box 1 of the annual calculation should reflect only the balance of the price payable on or after January 2010.

Latest VAT News (continued 3)

Effect of 'opt-in' removal

Removal of the opt-in means that where tour operators have not previously recovered VAT on goods and services supplied to them for the direct benefit of the traveller, it can be recovered from 1 January 2010 for supplies made after this date. Equally, from 1 January 2010, VAT should be accounted for on the full value of supplies after this date (including payments received prior to 1 January 2010). A VAT invoice must also be issued, although, due to the customers being tour operators themselves, VAT can only be recovered if they are supplying on the travel services to another business for resale. Tour operators who use the date of receipt of payments exceeding 20% of the selling price as their tax point, should also issue a belated VAT invoice in respect of those payments.

REVENUE & CUSTOMS BRIEF 75/09

VAT and bingo duty: Update on implications of Rank litigation in respect of bingo

A follow-up to R&CBs 40/09 and 55/09 issued after the High Court's decision in Rank plc, which said participation fees for mechanised cash bingo ('MCB') should have been exempt from VAT as a result of a breach of fiscal neutrality. Businesses were invited to submit repayment claims for VAT overpaid on MCB, and HMRC say these are being dealt with. R&CB 55/09 explained how the claims will affect the liability of a business to bingo duty.

Since then, HMRC says it has received further representations that the High Court judgment applies more widely to other forms of bingo played under the same sections of the Gaming Act. Having considered it carefully, HMRC accepts that the judgment has a wider application to other forms of bingo. As such, claims for VAT overpaid on participation fees for other types of bingo, in addition to MCB, will now be considered, subject to the normal rules. It also means that the advice on bingo duty in R&CB 55/09 now applies to all bingo participation fees.

The Brief points out that the Rank case is still ongoing, with the Court of Appeal due to hear HMRC's appeal in April 2010. This means that if HMRC is successful at the CoA (or subsequent higher court), any repayments made to businesses on the back of the High Court decision will need to be repaid plus interest. Consequently, businesses may prefer to await the final outcome of the case, although protective claims can still be lodged.

The Brief outlines the capping time limits and the voluntary dislosure limits, and closes with another reminder about increased liability to bingo duty as a result of applying the VAT exemption.

VAT INFORMATION SHEET 16/09

Electronically supplied services: Special scheme for non-EU businesses

An announcement that, from 1 January 2010, the standard rate of VAT in the UK will increase from 15% to 17.5%.

VAT INFORMATION SHEET 17/09

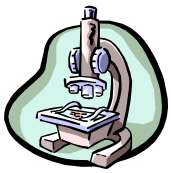
Electronically supplied services: Special scheme for non-EU businesses

An announcement that, from 1 January 2010, the standard rate of VAT in Ireland will decrease from 21.5% to 20%.

VAT INFORMATION SHEET 01/10

Electronically supplied services: Special scheme for non-EU businesses

Details of the currency exchange rates to be used for the December 2009 period in the Special Scheme for Non-EU Businesses relating to the supply of electronically supplied services.



In Focus

DIY refunds – get those credit notes!

A recent VAT Tribunal case has reinforced the need for DIY claimants to ensure that suppliers charge them the correct rate of VAT on qualifying goods and services. In Michael Roy Culverwell (TC00222), the Appellant was charged standard-rated VAT on the supply and installation of doors and windows for his new home, which was completed in May 2008. The disputed VAT of £826.16 was incurred on two invoices dated in 2005.

The Appellant submitted a VAT refund claim to HMRC a few weeks after completion, and was repaid the vast majority of it. However, HMRC refused to repay the £826.16 on the basis that the two invoices should have been zero-rated. The letter from HMRC cited the contents of Section 12.4 of (the now withdrawn) Public Notice 719, which states:

> ***"What if I had been charged an incorrect amount of VAT?***
>
> *VAT in error cannot be claimed from Customs and Excise. When an error occurs, such as when VAT is charged on work that should be zero-rated, your supplier must correct it."*

The Appellant contacted the suppliers to request credit notes and cheques for the VAT wrongly charged, but was told that as the invoices were more than three years old, credit notes could not be issued under the capping rules. In view of this, the Appellant wrote back to HMRC asking for reconsideration of the refusal. He explained that the £826.16 VAT was now capped, and that a refund by HMRC would avoid him having to take the builders to the Small Claims Court to recover the VAT amount. HMRC refused the refund, once again citing section 12.4 of Notice 719 and adding that there is no provision in law for HMRC to refund incorrectly charged VAT.

The Appellant appealed the matter to the Tribunal, which held that the supplies should have been zero-rated, and as such, HMRC was unable to use Section 35 VAT Act 1994 (which covers the DIY Scheme) to refund the VAT. The Tribunal said HMRC had acted correctly in accordance with the law, and followed the decisions in *RJ Vincett* (VTD 10,932), *PS George* (20,400) and *D O'Reilly* (10,945), which were all on the same issue.

The case shows how important it is for DIY claimants to check through their invoices to see if VAT has been incorrectly charged on any zero-rated supplies of services. It is equally important to do those checks as and when the invoices are received, as this should ensure that any wrongly charged VAT is identified before the invoice is more than three years old. That way, suppliers will still be able to refund the VAT with a credit note and cheque. Although Notice 719 was withdrawn by HMRC in August 2009, HMRC have included similar guidance to Section 12.4 in the replacement forms VAT431NB and VAT431C.

Although the Appellant lost the appeal, fortunately for him, the amount concerned was not significant. However, it could just as easily have been the VAT charged on his largest invoices, and that is the thing to remember when compiling a future DIY claim.

PRE-BUDGET REPORT 2009 – SUMMARY OF VAT CHANGES

1. Reversion to 17.5% Standard Rate

The standard rate of VAT will revert to the previous 17.5% rate from 1 January 2010. This is as originally intended when the rate reduction was announced in PBR 2008, and goes ahead in spite of protests from businesses, mainly retailers, that the reversion will cause considerable administrative problems.

Anti-forestalling legislation is being introduced that will create an additional 2.5% charge in specific situations where HMRC believe supplies are being invoiced or paid before 1.1.10 outside normal trading patterns in order to charge 15% on supplies to businesses that cannot recover all the VAT charged to them.

2. Flat Rate Scheme

The flat rate scheme percentages were recalculated in December 2008 to reflect the reduction to 15%, but are now being adjusted to reflect both the 17.5% rate **and** the latest HMRC data about business VAT liabilities in each sector. A comparison with rates prior to December 2008 shows that a number of categories have changed, and whilst a few are lower than they were then, there is an overall increase.

3. Fuel Scale Charge

Fuel scale charges will increase from 1 January 2010 to reflect the 17.5% VAT rate. VAT returns spanning the change date will need to be fairly apportioned.

4. The EU 'VAT Package'

It was confirmed that from 1 January 2010, several changes will be made to the VAT regulations to effect the following VAT Package elements:

- the requirement to add intra-EU supplies of 'reverse charge' services to EC Sales Lists
- time of supply changes for intra-EU supplies of 'reverse charge' services
- new electronic method of making 8th Directive claims of VAT incurred in other EU Member States

5. Enforcement of Court Judgments in VAT Litigation Cases

HMRC are introducing a policy change for VAT litigation cases where a court judgment has been delivered, but it is already known the case will be further appealed. Currently, where a judgment goes against HMRC, they will normally invite refund claims pending the outcome of the appeal to the higher court. However, where a judgment goes in favour of HMRC, they do not consistently seek to collect the tax until the litigation is ultimately finalised. With effect from 1 April 2010, HMRC will adopt a consistent approach by collecting tax following Tribunal and Court judgments in its favour, even if it is known that a further appeal is to be made.

6. VAT and Excise Duties – consultation on penalties for failures to make returns

HMRC have launched a consultation on proposed changes to penalties for failing to make VAT (and excise duty) returns, which will bring them into line with those introduced for direct taxes. The proposed legislation takes account of the fact that indirect tax returns are often made more frequently than direct tax returns. Responses to the consultation are due by 3 March 2010.

7. Working with Tax Agents – further consultation

HMRC issued an initial consultation document on working with agents in Budget 2009. A further document has been issued with more specific proposals and a summary of the responses to the previous consultation. The new consultation proposes that HMRC should prioritise work on revised procedures for disclosures to professional bodies, measures for deliberate wrongdoing by tax agents, and legislation for agents who make high volumes of repayment claims. HMRC will also work on developing responses to agents with persistent shortcomings in their work that fall short of deliberate wrongdoing.

VAT Cases

HIGH COURT SAYS TRIBUNAL SHOULD NOT IGNORE CONTRACTS WHEN DECIDING IF TAXPAYER IS ACTING AS AGENT OR PRINCIPAL

This dispute involved the supply of loft conversions, and whether the Appellant, a limited company, was supplying conversions as principal, or acting as agents on behalf of three other companies.

The Appellant argued VAT was only due on its project management services, not the full consideration paid by customers. The design and inspection services were supplied by a company owned by the same individual as the Appellant, with the other two companies being run by his daughter and his ex-wife.

Previously, following evidence given by one of the Appellant's customers, the VAT Tribunal had found that customers were completely unaware of the involvement of the other companies, and that if things went wrong, they sought redress from the Appellant. The Chairman highlighted a number of clauses in the contract between the Appellant and its customers which were inconsistent with agency treatment, and dismissed the appeal.

The Appellant appealed to the High Court on the basis that the Tribunal had not made any actual finding that the contractual documents were a sham, or that parties departed from the contractual arrangements. On that basis, it argued that the VAT position should follow the contractual documentation. The High Court held that the Tribunal had adopted an unstructured approach, and that instead of starting by looking at case law, it should have used the facts established by the contracts to consider whether they were a sham or were superseded by a different contract. The Court added that whilst the Tribunal mentioned a number of features which suggested the contract did not represent the real situation, none of these were referred to when making the decision. The Court said the Tribunal's decision could not stand, and remitted the case back to the Tribunal for reconsideration.

A1 Lofts Limited, High Court Chancery Division, 30 October 2009

TRIBUNAL SAYS INTENDED YACHT CHARTERS GAVE ENTITLEMENT TO REGISTER AS INTENDING TRADER

This was an appeal against HMRC's refusal to register the Appellant for VAT. The Appellant, a limited company, purchased a yacht in August 2006 which it said was for chartering through an agent to its Directors and a variety of related companies and individuals.

The Appellant's requested registration in July 2006, but was refused. According to HMRC, there was uncertainty around the financing of the purchase of the yacht, and the arrangement with the agent constituted a single charter for the yacht. The initial exchanges in the case reflected badly on the Appellant due to the amount of time spent examining records on how the yacht was purchased, together with its failure to provide a witness familiar with the business's records.

HMRC argued that the Tribunal should follow the approach taken in *Peachtree Enterprises Ltd,* where the Tribunal limited itself to the facts available at the time. The Tribunal Judge dismissed this approach, and stated it would have reached the same conclusion anyway.

However, the Tribunal found that the activities undertaken did actually constitute an economic activity for the purposes of Article 9 of the EC VAT Directive, and that they were carrying on a business in the course of which supplies were being made for a consideration. The appeal was thus allowed. However, given the Appellant's lack of explanation for its accounting records, the Tribunal directed HMRC to only pay 40% of its costs.

Heath House Charter Limited (TC00249)

TRIBUNAL SAYS EXEMPT SUPPLY OF LAND WAS THE PRINCIPAL ELEMENT OF CHILDREN'S PARTIES

This case looked at whether the Appellant's provision of children's parties was a single taxable supply, or a multiple supply of exempt land and taxable refreshments.

During the week, the property known as 'The Barn' is used primarily as a nursery for young children. At weekends, however, it is hired out for children's parties. Parents book the parties for an inclusive price per head, which consists of the use of the hall for 75 minutes, followed by a 'rudimentary' buffet. A member of staff greets the party at the beginning of the session, and then tidies up and makes sure the hall is ready for the next party. However, it was up to the parents to supervise the children. At the end of the 75-minute session, the party would move to a separate area to enjoy their refreshments.

The Appellant said there were three elements to its supply, which were the licence to occupy the hall, the use of the play equipment, and the provision of catering. It argued under *Card Protection Plan* that the principal supply was the licence to occupy, with the other supplies being ancillary to it. On that basis, there was a single exempt supply. HMRC argued that there was a single standard-rated supply of a children's party.

The Tribunal used the established approach of establishing if there was '*a single supply as a matter of economic reality, which should not be artificially split*'. It found that the use of the hall and provision of refreshments were the main elements of the supply. Other supplies, such as the use of play equipment and tables and chairs, were ancillary to the use of the hall and refreshments respectively. As such, the Tribunal rejected the Appellant's argument that the other services were ancillary to the use of the hall.

The Tribunal went on to consider whether the two principal services supplied for a single price were a single supply of a children's party or two separate supplies. It held that there were two separate supplies, finding support in the *Levob case,* which found a single supply due to the relevant goods and services being so closely linked that they formed a whole transaction which would be artificial to split, and that one without the other had no purpose. In applying the reverse of this, the Tribunal said the supply of the hall and refreshments were not closely linked, and that one could be enjoyed without the other. The Judge said the separated 75-minute use of the hall followed by the refreshments supported this conclusion.

Having concluded there were two separate supplies, the Tribunal went on to consider whether the licence to occupy the hall was exempt under Schedule 9 VAT Act. It said that even after taking into account the ancillary supplies, the grant of the use of the hall was an exempt supply of land.

Diana Bryce t/a 'The Barn' (TC00298)

TRIBUNAL SAYS NEW BUILDING LINKED TO CARE HOME WAS NOT ELIGIBLE FOR ZERO-RATING

This case concerns a newly constructed building adjacent to a residential home intended for a solely for a residential purpose. The first issue is whether the supplies relate to the construction of a zero-rated building. In deciding whether the building was a standard rated extension, the Tribunal found that it was similar in appearance to the existing building, was dependent on the main building, and was inextricably linked to it for access. As such, it found that the new building was an extension. The second issue was that if the building was found to be an extension, it was not caught by the restriction for extensions under note 16(b) of Group 5 to Schedule 8, because it created additional dwellings. The Tribunal dismissed this argument. First of all, the zero rating provisions applied to the construction of buildings as dwellings or intended for use solely for a residential purpose. The Judge pointed out that the new building was either a

residential home or a dwelling, but could not be both. This contention 'flew in the face of its evidence' that the building was a residential home, and contradicted its principal assertion. However, even if this was the case, the Judge pointed out that the individual rooms did not meet the definition of a dwelling in note 2 of group 5. The Tribunal found that the building was not an extension that created additional dwellings, and so dismissed the appeal.

Rebba Construction Ltd (TC00240)

TRIBUNAL SAYS APPELLANT CAN RECOVER VAT ON RELOCATION AND ACCOMMODATION EXPENSES

In this case, the Appellant, a taxable consultancy business, appealed against an input tax assessment raised by HMRC after a VAT visit.

The assessment related to two types of expense. The first was the VAT incurred on providing accommodation used by both directors and employees whilst attending clients in the area. The second was the VAT incurred on the relocation costs of an employee (who later became a Director). The costs were paid by the Appellant to reduce the employee's travelling time. One of the other arguments raised by the Appellant was the conflicting rules between direct and indirect tax, which it contended should be the same.

On the accommodation expenses, given the information presented to it, the Tribunal said the input tax should not be wholly disallowed as a proportion of it is used for the purpose of the business rather than domestic use by a director. This part of the appeal was therefore allowed, and HMRC were invited to agree a suitable apportionment. On the relocation expenses, the Tribunal said the key issue was whether the expenditure was for the purpose of the business and not just for its benefit. The Tribunal accepted that HMRC's internal manuals have no force of law, but said they were clear that VAT can be recovered on costs linked to the actual relocation. As such, the input VAT in relation to the actual move was allowed. With regards the other relocation costs, the Tribunal noted that HMRC's arguments were based on the false belief that the person was a Director at the time of the move. Again, this part of the appeal was remitted to HMRC to agree an appropriate apportionment.

On the Appellant's contention that there should be the same rules for indirect and direct tax, HMRC drew attention to the fact that indirect tax legislation is implemented under European legislation, and the rules and regulations which govern the taxes are completely different. The Tribunal therefore concluded that regardless of the fact that there is now one HMRC department, each tax should be applied separately.

Roderick Gunkel & Associates Ltd (TC00252)

VAT Tips

HOW A CHARITY CAN REDUCE ITS VAT COSTS ON GRANT INCOME

Although charities often rely on grant income in order to be able to fulfil their charitable aims, the fact that grants are not 'consideration for a supply' means they are a non-business income stream, and as such, none of the VAT incurred on related costs can be recovered.

The lost input tax effectively reduces the grant by an equivalent amount, so any means of preventing that loss will restore it to its full value. As it happens, there are actually two legitimate ways of doing this, and are outlined in the following example:

Grant Income:
Local authority grant of £100,000
Related Expenditure:
Salaries £60,000
Consultants £40,000 plus £7,000 VAT
Analysis:
Loss of irrecoverable VAT is £7,000, but no impact on VAT return, as all outside the scope.

SOLUTION 1

Convince the funder that they are contracting with you for the provision of a service, and that VAT has to be charged on the grant income. All the VAT on related expenditure is then recoverable.

Grant Income:
Services contract with local authority for £100,000 plus £17,500 VAT
Related Expenditure:
Salaries £60,000
Consultants £40,000 plus £7,000 VAT
No loss or surplus (but a temporary cashflow advantage of £117,500 less £107,000 = £10,500)
VAT return
Output VAT on sales £17,500
Input VAT on purchases £7,000
Net VAT payable to HMRC £10,500

SOLUTION 2

Instead of going down the contract route, ensure the value of the irrecoverable VAT is included in the grant application from the outset. The grant funders will accept it as a legitimate related cost.

Income:
Grant from local authority of £107,000
Expenditure:
Salaries £60,000
Consultants £47,000
VAT Return
No loss or surplus – VAT return unaffected.

SUMMARY

By considering the value of the irrecoverable VAT at the beginning of the grant process, charities will give themselves an opportunity to try to negate the loss through the use of one of two solutions outlined here.

VAT Advisers Ltd is a leading independent condultancy firm specialising in VAT. We provide advice and help on all VAT matters, and also advise on Customs Duty.

Our experienced consultants are ex-Officers of HMRC that were previously employed by 'Big Four' accountancy firms. If you have a query about this leaflet or VAT in general, please contact Steve Allen per the contact details below:

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