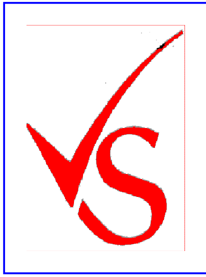

VAT Voice©

The bi-monthly newsletter of VAT Solutions (UK) Limited

September/October 2008

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PARENTS SEEK REDUCED VAT RATE ON SCHOOL UNIFORMS FOR BIG KIDS

It was recently reported in the Daily Mail that a quarter of all parents are paying VAT on school uniforms as a result of soaring child obesity, meaning they have to buy adult-sized clothing for their children. The article appears to be based on a campaign by the 'Schoolwear Association', which is calling for a 5% reduced rate of VAT on school uniforms.

Currently, there is no specific zero rating for school uniforms other than that generally available for children's clothing. However, Public Notice 714 does provide for zero rating "*if you supply garments under a specific agreement with a school catering exclusively for pupils under 14 years of age*" and "*The garments must be unique to that school by design, such as a prominent badge or piping in school colours, and held out for sale as being for that school only*." The concession is therefore limited to primary schools, leaving the parents of secondary school pupils whose measurements exceed that of the average child under 14 (as set out in the relevant British Standard) with no choice but to pay VAT on their school uniform.

The Schoolwear Association campaign acknowledges they cannot extend zero rating, but looks to apply a reduced rate to upper body items of School uniform bearing a school logo.

HMRC LOSS AT AN INTERIM TRIBUNAL HEARING 'UPS THE ANTE' ON LINNEWEBER VAT CLAIMS

There is increased pressure on HMRC to acknowledge the validity of VAT refund claims for gaming machines following a recent interim Tribunal decision.

Rank Group Ltd was successful in its appeal (VTD 20,777), after HMRC was accused of being inconsistent in the way it levied VAT on different kinds of gaming machine takings.

Rank had submitted a refund claim of up to £25 million for VAT it believes was overdeclared between 2003 and 2005 on gaming machines in its Mecca Bingo clubs and Grosvenor Casinos. The claim was made on the basis that the different treatment of takings, depending on where the random number generator was, breached fiscal neutrality, and that the correct remedy was to treat all takings as exempt from VAT. However, when the UK changed the law in December 2005, the takings from all machines were made taxable instead.

Whilst this is only an interim decision, and will be followed by further litigation this year when more evidence is available, the ruling is likely to affect other gaming machine operators, who may also be able to claim refunds. A large number of appeals resulting from HMRC's refusal to pay such refund claims have been stood over behind this case. The Tribunal was only looking at the period back to 2003, and the question of when this distortion of treatment first arose is not clear. The Tribunal also indicated that the matter may have to be referred to the ECJ, to resolve what it referred to as *'a tension between fiscal neutrality and legal certainty'*, so anyone who secures a refund from HMRC (if HMRC agree to repay on the basis of an interim Tribunal decision) should be aware that they will probably have to repay it plus interest if HMRC subsequently win.

The refund claims were made on the back of the *Linneweber* ECJ case (C-450/2), where the ECJ found that Germany was wrong to treat gaming machine takings differently depending on whether the machines were in casinos or arcades. Although this case had a different fact pattern (as the machines in *Linneweber* were all the same type), the Tribunal's findings in Rank Group seems to have been heavily swayed by that case.

Latest VAT News

REVENUE & CUSTOMS BRIEF 34/08

VAT – partial exemption – retrospective claims for input tax by higher education institutions (HEIs)

Clarification of HMRC policy on retrospective claims by HEIs that used a partial exemption method agreed under the Committee of Vice Chancellors & Principals (CVCP) guidelines. The Brief takes account of the Tribunal decision in *Wadham College Oxford & Merton College Oxford (VTD 20,233).*

HMRC say that prior to 1997, when the CVCP guidelines were withdrawn, a lot of HEIs determined their recoverable input tax using a simplified partial exemption method described in the guidelines as the CVCP method. The recoverable input tax was calculated as a fixed percentage of the output tax payable on certain taxable supplies known as 'tunnelled supplies'. For some HEIs, the tunnels did not deal with all taxable supplies, so they had the option of agreeing additional tunnels for any other supplies, or agreeing their own special method.

In the Wadham College case, a VAT reclaim for the period 1973 to 1994 was submitted to HMRC in 2003 on the basis that the CVCP method had not allowed the colleges to recover all the residual input tax they were entitled to on general overhead costs. HMRC rejected the claims on the basis of the calculations made, so the colleges appealed to the VAT Tribunal.

In the appeal, the Tribunal considered two key issues in detail:

- *whether the fixed percentages of the CVCP method gave credit for input tax incurred on general overheads used partly for tunnelled, taxable supplies*
- *how to calculate any unclaimed input tax that related to additional taxable supplies not covered by the tunnels*

On the first issue, the Tribunal concluded that the CVCP method provided credit for all the input tax they were entitled to in respect of the tunnelled, taxable supplies: both directly attributable and general overhead costs. So, unless the HEI made additional taxable supplies, not covered by the tunnels, then no further claim was due. On the second point, the Tribunal rejected both the colleges' proposed calculation and the method proposed by HMRC which included the values of all of the supplies of the HEI (including tunnelled supplies). The Tribunal invited both parties to reach agreement.

HMRC say that their policy now is that an HEI operating the CVCP method will only be entitled to claim further input tax if:

- *it made taxable supplies not covered by the tunnels in the CVCP method*
- *there was no agreement as to how input tax on these taxable supplies would be recovered*

Any entitlement to claim further input tax should be calculated using an appropriate methodology based on the use of the costs incurred.

HMRC end the Brief by stating that, following the House of Lords decision in Condé Nast and Fleming, which established that the three-year capping limit cannot be applied to unclaimed input tax incurred in periods ending before 1 May 1997, HEIs that operated a method based on the CVCP guidelines and who made taxable supplies not covered by the partial exemption method, may now wish to make claims in line with the Brief and Budget Notice 78. The deadline for such claims is 31 March 2009. HMRC add that if HEIs are uncertain on whether they have sufficient evidence to demonstrate that additional taxable supplies

existed, they may wish to contact their local VAT office for assistance. However, once it is established that they made taxable supplies not covered by the PE method, HMRC will only accept claims based on reasonable estimations with supporting evidence.

REVENUE & CUSTOMS BRIEF 35/08

VAT exemption for fund management services

Further to the announcement in Budget 2008, this Brief gives details of the amendment to the VAT exemption for fund management services with effect from 1 October 2008. It also provides information for businesses wishing to submit claims for overpaid VAT in the light of the changes.

HMRC state that EU VAT law exempts *'the management of special investment funds as defined by Member States'*. The interpretation of this in the UK was challenged, and, in light of the ECJ judgment in JP Morgan Fleming Claverhouse Investment Trust plc, HMRC accepted that closed-ended investment undertakings, such as investment trust companies ('ITCs'), should be defined for the purposes of the exemption. HMRC say the amendment gives effect to this judgment in UK law and, in particular, defines 'closed-ended collective investment undertaking' by reference to certain criteria which must be satisfied.

HMRC consider these criteria to be:

- its sole object is the investment of capital, raised from the public, wholly or mainly in securities
- it manages its assets on the principle of spreading investment risk
- all of its ordinary shares (of each class if there is more than one) or equivalent units are included in the official list maintained by the Financial Services Authority pursuant to section 74(1) of the Financial Services and Markets Act 2000, and
- all of its ordinary shares (of each class if there is more than one) or equivalent units are admitted to trading on a regulated market situated or operating in the United Kingdom

The Brief says that whilst the amended law comes into effect on 1 October 2008, it will represent the situation as it should have been since 1 January 1990, when the exemption was first introduced. There is no requirement to make adjustments in respect of supplies made prior to 1 October 2008, but any businesses which have accounted for VAT on fund management services now qualifying for exemption under the amended legislation, may now submit refund claims to HMRC. All claims are limited to a three-year period (except those that are subject to the HoL decision in the Fleming and Conde Naste case), and businesses must be able to produce evidence that they have accounted for VAT on the relevant services, and must be able to substantiate the amount claimed. HMRC say that claims should also be for all prescribed accounting periods in which the error occurred, and that where a claim does not take into account all errors or all affected accounting periods, they will seek to set-off amounts owed for those periods against amounts claimed in other periods. HMRC also reserves the right to reject a refund claim if it feels the amount would 'unjustly enrich' the claimant.

REVENUE & CUSTOMS BRIEF 36/08

VAT Treatment of Charity Challenge Events

An announcement of revised HMRC guidance on 'Charity Challenge Events', including those that qualify for the VAT charity fundraising exemption.

The Brief says many charities use Charity Challenge Events (e.g. running, walking and cycling events) to raise funds through the sponsorship of the individuals who take part. HMRC say that, following representations from the charity sector, they have since been

working with charities to produce revised guidance to assist charities to determine the correct VAT liability of such events. Revised guidance has been produced with examples and a flowchart, and will be included as updates to Notice 701/1 'Charities' and Notice CWL4 'Fund-raising events: Exemption for charities and other qualifying bodies'.

The Brief advises that Update 1 to CWL4 revises the existing guidance in Section 3.15 of that Notice, and cross-refers to the more detailed guidance now included as Update 2 to Notice 701/1, which introduces a revised section 5.9.4, cross-referenced to a new section 10 of that Notice.

HMRC says the guidance is effective from 31 July 2008, but is aware that some charities are likely to have signed contracts sometime before the events are due to take place. They will accept, therefore, that where a contract for an event has been signed, or negotiation with suppliers has started, or the event has been publicised prior to the publication of the new guidance, charities can account for VAT using their previous procedures.

The Brief ends with a comment that charities may wish to revisit their previous records and make claims for VAT incorrectly treated in respect of previous contracts. We would echo this suggestion.

REVENUE & CUSTOMS BRIEF 38/08

VAT: Default Interest and net errors of less than £2000
Announcement of a policy change on the application of default interest by HMRC.

The Brief advises that the current practice set out in paragraph 2.4 of Public Notice 700/43 'Default Interest' (and Note 4 on the VAT 652 form) of not charging default interest on net errors of £2000 or less separately notified to HMRC, will continue until 31 August 2008.

However, following the recent decision in the direct tax case of *Wilkinson v Commissioners of Inland Revenue,* HMRC state that this practice is no longer considered lawful, and will be withdrawn with effect from 1 September 2008. As such, all error notifications (known previously as voluntary disclosures) requiring an assessment may be subject to a default interest charge, irrespective of the amount involved. However, as before, de minimis net errors can continue to be corrected on a VAT return, and will not attract interest.

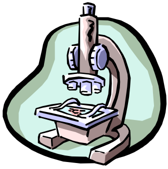
VAT INFORMATION SHEET 05/08

Electronically supplied services: Special scheme for non-EU businesses
Details of the latest currency exchange rates to be used in the Special Scheme for Non-EU Businesses relating to the supply of electronically supplied services.

HMRC PODCAST ON IMPROVING HMRC'S SERVICES FOR AGENTS/ THE NEW PENALTY REGIME

The HMRC website has released a podcast in which Brian Redford, director of HMRC's 'agents and employers service improvement programme', discusses how HMRC is improving its services for agents. He also outlines the new penalties regime for incorrect returns. The podcast link is below:
http://www.hmrc.gov.uk/podcasts/

Regarding the new penalty regime, the podcast has information on:
- Why the new regime was introduced
- What is meant by 'reasonable care'
- Reference on online training (link below)
http://www.hmrc.gov.uk/about/new-penalties/NPA/HTML/NPA_301.html
- The technical guidance given to staff which is available to everyone (link below)
http://www.hmrc.gov.uk/manuals/chmanual/CH80000.htm
- Reminder for interested parties of the specific penalties page on their website, which has been updated (link below)
http://www.hmrc.gov.uk/about/new-penalties/index.htm



In Focus

Ambiguity of HMRC letters to change VAT periods 'staggers' the Tribunal!

In a recent VAT Tribunal case, we lodged an appeal on behalf of our client, PTE Plc t/a 'Physique' (MAN/08/0265 – VTD 20,722), against the imposition of a default surcharge of nearly £20k for the submission of a late return for the period 11/07. We were successful in the appeal, and the penalty was removed on the grounds that the company had a 'reasonable excuse' for sending in the return late.

The background to the case was that in early 2007, PTE had a number of staff changes in its accounts department and reorganised its business. By early October, it became apparent that it would not be able to complete its 11/07 VAT return by the due date. The company sent a fax to HMRC on 11 October 2007 explaining the situation, and stressing that it wanted its current return period changed to a December end, and that all future returns would end December, March etc as it was not able to complete the return on time due to the pressure of work.

On 2 November, HMRC replied saying '*This has now been approved and your VAT returns will now end on the last days of…'.* Not unreasonably, the client considered this to be agreement to the change, particularly as it had made it clear that it needed the change in the current period in order to get the return in on time. The company did not take much notice of the rest of the letter, which said: '*Before this change becomes effective you may receive a VAT return under the old arrangements. If this happens you must complete the return and send it to …'*. Doing this, of course, would have completely negated any benefit from changing the VAT return stagger.

The client received the 11/07 return as usual, and a one-month return for December 2007. It naturally threw away the November return, and assumed that the December return was for 4 months. It filled it in, and sent it on time for what it thought was a four-month period. HMRC replied '*oh no, we want two returns and the November one was late so we will impose a penalty for a late return'*.

Similarly ambiguous wording was responsible for two Tribunal appeals in 1995 and 2001, which HMRC also lost. The Tribunal Chairman expressed concern that, despite this, HMRC had still not changed the wording of these letters, and the meaning was still unclear.

Quoting, the Chairman said:

> *'We do not see why it should be the duty of a taxpayer to make inquiries as to the meaning of a letter which the Commissioners have written, just in case there should be some hidden ambiguity in it. The Commissioners should be taken to mean what they say; it is, in our judgment, up to them to say what they mean'*

Not surprisingly, in this case, the client's appeal was successful.

Tip. There are two main points to take from this case. Firstly, if you do ask for a change of VAT stagger, you should always complete any outstanding returns, even if the authorisation letter seems to make it clear that the change is current rather than from a date in the future. Secondly, if HMRC continues to produce ambiguous letters with unclear meaning, you may have a reasonable excuse for your mistake and avoid a penalty.

It must be hoped that HMRC will now take the Tribunal's advice onboard and change the wording of these letters, so that their meaning is clear and these misunderstandings do not happen again in the future.

VAT Cases

VAT TRIBUNAL SAYS 'LENNARTZ' PRINCIPLE APPLIES TO REFURB OF EXISTING ASSETS, NOT JUST THE CREATION OF NEW ONES

The dispute in this appeal was whether the Lennartz principle applies when a taxable person carries out extensive reconstruction work to an existing building.

The *Lennartz* ECJ decision established that a taxable person may take initial input tax deduction on the full cost of goods purchased as a business asset, and then recognise a corresponding obligation to account for output tax on the private use of the goods. In this case, the Appellant, a charitable art gallery, argued that it was entitled to recover all the input tax incurred on the conversion work on a former library which adjoins its building.

As a charity, the Appellant primarily displays works of art for free, which is not a business activity. It also makes taxable supplies, and had opted to tax the premises on the basis of making taxable supplies in the refurbished part of the building. The appeal was not against any particular repayment claim or assessment, but against a decision outlined in a letter from HMRC stating that Lennartz principle could not be applied in this case.

Whilst most of the refurbishment work qualified for zero-rating as an 'approved alteration' to a listed building used for a relevant charitable purpose, it was the small proportion relating to works of non-business areas to which the question of eligibility of Lennartz applied.

HMRC argued that for Lennartz to apply, it is not sufficient that the expenditure is capital in nature; the construction work should create an entirely new asset. Interestingly, the Appellant commented that if the appeal was not successful on the grounds that the expenditure produced a capital good to which Lennartz applied, the Tribunal should stay the proceedings until the outcome of a Dutch ECJ case, *Vereniging Noordelijke Land-en Tuinbuow Organisatie*, which questions whether Article 6.2 of the Sixth Directive is limited to capital goods.

However, the Tribunal was in agreement with the Appellant's reliance on the proposed new Article 168a (previously 17 2.(a)) to be inserted into the VAT Directive. This stipulates that Lennartz can also apply to the expenditure on extensive renovation work that is on par with the expenditure on the acquisition or construction of immovable property.

The Tribunal found no support for HMRC's proposition that the application of Lennartz is confined to new acquisitions by purchase or construction of a wholly new asset or building.

Whitechapel Art Gallery (VTD 20,720)

TRIBUNAL SAYS SCAFFOLDING HIRE COMPRISES TWO SEPARATE SUPPLIES AT DIFFERENT RATES

The Appellant provides scaffolding services to the building industry. The services provided can be broken down into an eight-stage process from initial erection through to alterations, amendments, and movement through to final dismantling.

The Appellant said it was making a single zero-rated supply of its services, but HMRC argued that the possession of the scaffolding passed to the customer created two separate supplies; one a zero-rated supply of erection and dismantling; the other a standard-rated supply of the hire of equipment.

Interestingly, the Appellant does charge VAT on the invoice relating to work that overruns the contract period. It admitted this work is no

different from that carried out in the agreed period. However, the Tribunal Chairman did not dwell on this point when determining the correct legal treatment of the supplies, merely dismissing it as illogical.

The Appellant's argument focused on its belief that the facts of this case were identical to those in *GT Scaffolding Ltd (GT).* In *GT,* the Tribunal had held that the "possession" of the scaffolding did not pass to the customer, and hence the supply in question was zero-rated. In the Appellant's view, the fact that its terms and conditions stated that the customer was not allowed to alter or adapt the scaffolding structure, combined with a continuing site presence of the Appellant's workforce, was inconsistent with transfer of possession.

The Tribunal disagreed, however, finding that its customers did effectively acquire exclusive use and de facto control of the scaffolding. Despite the fact that the Appellant's staff are on site most of the time carrying out adaptations, as in *R&M Scaffolding,* the point is stressed that the Appellant has no physical control over the use to which the scaffolding is put by the customer. The Tribunal concluded that there was a transfer of possession of goods. Therefore, there were two distinct supplies, and HMRC was correct to apportion the price between the two items.

Pharaoh Scaffolding (VTD 20,741)

TRIBUNAL SAYS THAT RESIDUAL SUBSCRIPTIONS OF NON-PROFIT MEMBERSHIP BODY ARE TAXABLE

The dispute in this appeal concerns the correct VAT treatment of the 'residual subscription income' of a not-for-profit representative national body concerned with conservation and shooting.

It was common ground that each subscription received by the Appellant was attributable to both a zero-rated supply of magazines and an exempt supply of 'making insurance arrangements'. However, HMRC disagreed with the Appellant's contention that the 'residual subscription income' should be treated as exempt.

In 1994, the Commissioners ruled that the supply was exempt, but in 2006, the decision was altered, and the Appellant was told that the residual subscription must be treated as the payment for a taxable supply. The Appellant disagreed, and, in April 2007, HMRC raised an assessment for £397,551.

The Appellant argued that the payment is exempt, as the residual subscription falls within Sch 9, Group 9(1), VATA 1994, or failing that, Sch 9, Group 10(3). The first grants exemption to '*a body which has objects which are in the public domain and are of a political, religious, patriotic, philosophical, philanthropic or civic nature*'. The second exempts '*the supply by an eligible body to an individual, except, where the body operates a membership scheme, an individual who is not a member, of services closely linked with and essential to sport or physical education in which the individual is taking part*.'

It was concluded that, although conservation and other public-spirited activities represent a substantial part of what the Appellant does, the fact that they did not constitute its primary aim was inescapable. The Appellant's mission statement and material sent to its members clearly state that it is a representative body for sporting shooters, and its other activities are subordinate to that main aim. It followed that exemption could only apply if its principal aim of representing members' interests could be said to be of a political, philanthropic or civic nature, and in the public interest. As the supply could not be said to fall in either of those categories, the appeal was dismissed.

The British Association for Shooting and Conservation Limited (VTD 20,739)

TRIBUNAL SAYS WORK DONE ON VILLAGE HALL DID NOT QUALIFY FOR CHARITABLE ZERO-RATING

This was an appeal against HMRC's decision that building works undertaken at a village hall were zero-rated under the 'relevant charitable purpose' building provisions of Item 2 Sch 8 Group 5 VATA 1994.

The case considered whether the new works to the village hall constituted an annexe or an extension. Whilst Note 16 of Group 5 permits zero-rating for construction of a charitable building, it excludes enlargements or extensions (except where it creates an additional dwelling) or an annexe. Note 17, however, allows the construction of an annexe to be zero-rated where "*whole or part of the annexe is intended for use for a relevant charitable purpose and –*

(a) the annexe is capable of functioning independently from the existing building; and
(b) the only access, or where there is more than one means of access, the main access to: -
(i) the annexe is not via the existing building; and
(ii) the existing building is not via the annexe."

The Tribunal referred to the *MacNamara* case which gives a clearer insight into Note 16. In this case, the point was made that the annexe can only be zero-rated if it is sufficiently unintegrated with the existing building. Definitions of enlargement, extension and annexe were also given. An extension creates an additional section which has a measure of integration with the existing building, whilst an annexe is an adjunct of the existing building with little integration with the existing building.

On whether the works in question created an annexe or an extension, the Tribunal looked for evidence of some independent function as well as physical separation to test lack of integration. The Tribunal used the judgment in *Cantrell No.1* & *No.2* to summarise a method of distinguishing between (i) an extension and an enlargement and (ii) whether the works constitute an annexe of an existing building.

The Tribunal took the approach that they should test the works in question against each of the concepts in Note 17. HMRC contended that the works constitute an extension and that educated laymen would call it an extension. They argued that the roof line visibly continued the roofline of the existing building and also that the inner layout indicated that the facilities of new works were equipped to function for the benefit of the old hall, and as such, is consistent with the new works being an extension.

HMRC further argued that even if the Tribunal found it to be an annexe and not an extension, then by virtue of 17(b) it would not qualify for zero rating. This is because the 'main access' (measured by size) to the annexe is via the existing building (evidenced by floor plans).

The appellant made six arguments:

1. The effects of regulatory constraints on how buildings should be designed should be discounted when approaching the statutory tests. The Tribunal's response was that the VAT tests in Note 16 apply to what is physically constructed regardless of reasons for its particular construction.

2. Local geography should be taken into account. The village is built on a steep hillside and so this restricts the design of the building. The Tribunal's response was that they cannot apply different meanings of the statute in different parts of the UK. However, they can attach less weight to the long and thin construction of the new works given it is not built in a flatter part of the UK.

3. The size and shape of the village hall site constrained them from constructing the annexe as a separate building linked by a corridor to the old building. The Tribunal's

response was that the test relates to the building as built, and intention will not be taken into account.

4. To measure the degree of 'lack of integration', the mere joinder along one wall cannot be enough to make it an extension. The Tribunal agreed with this point. However, if the internal layout of the new works disclosed no integration with the old hall, they would have not classified it as an extension

5. The new works were capable of separate function. The Tribunal agreed.

6. The physical appearance of the addition must not dictate what constitutes 'main access'. The Tribunal approached the definition of 'main access' according to convenience and not size. Had the Tribunal not found the new works to be an extension, then by virtue of Note 17 zero rating would have been allowed.

In reaching its conclusion, the Tribunal was strongly influenced by the internal layout. The Appellant's main argument was that the works were tailored to fit requirements for zero-rating as set out in Public Notice 708. Particular reliance was placed upon para 3.2.6, which states "*an 'annexe' is a structure which has only minimal physical connection with the existing building…the structure could…abut the existing building along one wall with a connecting door.*" The Tribunal only made the comment that this description could still apply to an extension, and concluded the works were an extension. Furthermore, the counsel for HMRC advised that had the taxpayer approached HMRC at the planning stage, HMRC might have agreed plans so as to give rise to an annexe and not an extension.

Abercych Village Association VTD (20,746)

TRIBUNAL SAYS SERVICES FROM UK SUBSIDIARY TO US PARENT CANNOT BE REVERSE CHARGED

The Appellant was the UK subsidiary of a global credit card company, and provided services to its US parent. The issue was about whether the services were supplied *'where received'* under Schedule 5, VATA 1994, or *'where the supplier belongs' (i.e.* the 'basic rule' for place of supply of services).

The services involved finance management, project management, facilities management transaction management, and 'blue sky thinking'. The Appellant argued these were multiple supplies of Schedule 5 services (consultancy, legal, advisory, accountancy etc) and so were not subject to UK VAT. HMRC argued there was a single supply of management services, all elements of which related to properties of the Amex group in EMEA countries. The Appellant managed and approved lease and real estate transactions, took decisions, but did not provide any advice. It was not, therefore, acting in an advisory or consultancy manner.

The Tribunal found for HMRC, using the *Levob* test to identify that the elements formed, objectively, a single indivisible economic supply that it would be artificial to split. That supply was Schedule 5 for the reasons above. Although the services related to properties, there was no dominant element that related to any specific property, so they were not services relating to land. The Tribunal also considered the customer's viewpoint, concluding that the customer received a single supply of management services supplied 'where the supplier belongs'. The Appeal was dismissed.

American Express Services Europe Ltd (VTD 20,744)

VAT Tips

HOW LATE CAN YOU DEFER PAYING VAT?

The basic rule

The basic rule is that VAT has to accounted for at the time the goods are 'made available' (usually delivered) to the customer. However, this is overridden by the actual tax points, which are the earlier of either:

- invoice date (if issued within 14 days of the basic tax point); **or**
- receipt of payment.

With services, the basic tax point is when all the work, except billing, is completed. Again, this is overridden by the actual tax point, which is the issue of an invoice or receipt of payment, if earlier.

For businesses that make 'continuous supplies of services', for example accountants, consultants and solicitors where periodic invoices are issued and payments received the tax point is the date of invoice or the date of receipt of payment whichever is first.

These tax point rules can be used to your advantage and, in many cases, can push the tax point back to the receipt of payment, even for businesses that are not on cash accounting.

If your business supplies services, the tax point rules can be used to your advantage much more so than for businesses which supply goods. Remember, building and construction works are seen as services rather than goods.

Tip

Some of the things that can be done to delay paying over the VAT until you have received payment for your services are:

- Do not issue a VAT invoice, but issue a 'request for payment. Once you have been paid, you issue the tax invoice. The tax point is the receipt of the payment.
- If you are involved in the construction industry you can use 'authenticated receipts' rather than VAT invoices. Disputes over the value of interim payments are common in this sector so rather than issue an invoice that will be disputed, issue an authenticated receipt showing the value of the work done. Once it has been agreed the customer authenticates it and returns it to the supplier along with payment and creates a tax point at that later date. There is no need to issue a VAT invoice in these circumstances.

TOLLEY'S VAT CONFERENCE

We are pleased to announce details of a forthcoming Tolley's VAT conference entitled '*The Future of VAT in Financial Services & Insurance.'* The conference will take place in Central London on Thursday, 6 November 2008, and some of the topics that will be covered are:

- Financial Services and the use of Intermediaries – including a discussion of cases and TMG
- VAT and Fund Management
- Insurance Focus – with a discussion of key cases, changes to date and policy changes
- Modernising VAT across Europe – with an update on the EU review
- Contentious VAT – the key issues, case law update and new developments at a domestic and ECJ level
- New VAT packages

VAT Voice readers are eligible for a 10% discount that will reduce the early booking price from £649.00 to £584.10 plus VAT (from 18 September, price is £699 plus VAT before the discount). Just mention 'VAT Voice' when booking.

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Our consultants are all former Officers of HMRC who were also previously employed by 'Big Four' accountancy firms. If you have a query about this leaflet or VAT in general, please contact Steve Allen or Andrew Needham at either of our offices listed below:

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