



January 2012

VATflash

What normally proves to be a quiet month for VAT issues, this January has been anything but.

HMRC'S BEHAVIOUR

HMRC's behaviour in tax and VAT disputes has been under scrutiny by the Tribunal recently. However, despite being severely criticised in several cases heard by the First Tier Tribunal, there are no signs of contrition from HMRC. With the pressure on businesses to save tax and VAT costs, and equal pressure on HMRC to raise additional revenue and be seen to 'crack-down' on perceived avoidance, we can probably expect more of the same over the coming years even on innocent businesses just trying to get things right.

WASTED COSTS CLAIMS

Successful appellants to the First Tier Tribunal do not normally get their costs back. However, in line with the above criticism of HMRC's behaviour, we have also seen several successful claims recently by businesses for 'wasted costs'. The moral is that if you feel aggrieved at your treatment by HMRC or have had to expend considerable costs just to prove you were right all along, it may be worth taking the point further.

VAT CLEARANCES

HMRC are currently consulting on introducing a proper clearance system for VAT which businesses have been denied for many years. We shall see how the new system is structured and keep you updated as we hear more.

7-DAY FILING DEADLINE

A reminder that if you file and pay your VAT returns electronically (as most are required to nowadays), you have an extra 7 calendar days for HMRC to receive the return and payment after the usual end of the month deadline. It is important to note, however, that the additional 7 calendar days only applies to payment returns. If you are filing a VAT return that claims a net repayment, the deadline remains at the end of the month following the period-end. Although there are no tax-geared penalties for late filing of repayment returns under the current system, the Government's proposed new penalty system will, when it is introduced,

impose both late filing penalties and, for payment returns, tax-geared penalties as well. Speak to your UHY partner if you would like assistance with your VAT administration or compliance procedures to ensure that your returns are filed on time.

ZERO-RATING CLARIFICATION

A couple of recent announcements have clarified the zero-rating for new accommodation linked to healthcare and the sale of vehicles adapted for the disabled.

HMRC have confirmed that new accommodation constructed for the purpose of care will still qualify for zero-rating if it meets the fundamental condition of being 'designed as a dwelling'. This follows confusion over the way some local authorities treated such accommodation for planning permission purposes.

Unfortunately, it is not all good news. In a separate announcement, HMRC have also confirmed the withdrawal of zero-rating for motor vehicles adapted for disabled use after sale. HMRC have confirmed that the zero-rating for such vehicles only applies if the adaptations are carried out before being sold. This was originally pre-announced a year ago to give relevant businesses time to adapt to the change.

PARTNERSHIP (OR NOT)

It is a fundamental principle of VAT that HMRC can only collect VAT from the legal entity in question, whether that be a sole proprietor, partnership or other. In a recent case involving a bankrupt sole proprietor, HMRC took him and his estranged wife to the Tribunal arguing that they were in business as a partnership so that HMRC could collect unpaid VAT from either partner under the principle of joint and several liability. In a fairly clear-cut decision, the Tribunal held that the unhappy couple were not in business as a partnership. Admittedly, the case only got this far because both individuals refused to speak to HMRC and the wife refused to speak to anyone who alleged that she was in partnership with her estranged husband, but it does show the creative lengths that HMRC will go to in order to recover revenue.



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EU VAT NUMBERS

An interesting case has recently arisen concerning the sale of goods to businesses in other EU member states and an obligation upon the UK seller to verify their customer's own VAT number. In slightly unfortunate circumstances, the UK seller was given a false VAT number by her Spanish customer but because it conformed to the known format of Spanish VAT numbers she did not think it necessary to check any further. When justifying a penalty to the UK seller, HMRC relied upon their guidance which states that in such circumstances the UK seller will only be able to avoid liability for VAT if they can prove they have taken 'all reasonable steps' to confirm that the VAT number was valid. In this instance, the taxpayer had not and the Tribunal found in favour of HMRC (although reducing the additional penalty by 50% for co-operation). UK businesses should always endeavour to check their EU customers' VAT numbers and if in doubt you should seek further advice before taking a chance.

COMPOUND INTEREST

Finally, the long-awaited Opinion from the European Advocate General has been issued in the Littlewoods case, whereby compound interest was sought from HMRC on past VAT refunds. In a typically obtuse Opinion, following howls of protest from several EU member state Governments, the Advocate General has passed the buck squarely back to the member states' Courts. It is now for member states themselves to determine whether the domestic provisions for compensating taxpayers who have been required to pay VAT wrongly are in accordance with European law. This does nothing for taxpayers and could be seen as giving HMRC the green light to ignore claims for restitution of compound interest from those UK businesses forced to pay VAT when HMRC had misread the law in the first place.

If you wish to review your circumstances or would like advice on any of the above please contact your usual UHY partner. Alternatively, view the profiles and contact details of our specialists on www.uhy-uk.com

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