



December 2011

VATflash

This month's VATflash includes updates on legislation, business reminders, Government announcements and other VAT related issues to read during your Christmas festivities.

ZERO-RATING FOR BOOKS

Despite HMRC's long-standing position that only books with textual material can be zero-rated, a recent case held that a photobook also qualified based on its intrinsic nature. This means that some suppliers could have been over-paying VAT to HMRC. Provided the book does not have a different purpose and its intrinsic nature is to be read or looked at, it could qualify for zero-rating and you could be able to claim the VAT back.

ALTERNATIVE EVIDENCE FOR INPUT TAX

Having valid purchase invoices is important when claiming input VAT. But it is also possible to claim input VAT without a VAT invoice since the law requires HMRC to use their discretion to accept alternative evidence. Not surprisingly they are resistant to accept anything as alternative evidence, but the Courts have recently held that HMRC are required to look at wider forms of evidence for input VAT purposes such as bank records, sales and purchase ledgers, accounts and other non-tax related commercial documentation. If you have had input VAT refused because of a lack of a VAT invoice but can substantiate the purchase by other means, it may be worth a further claim to HMRC.

CLAIMS AGAINST THE STATE

A fascinating case at the European Court recently looked at claims by a customer against his supplier, that he had been charged too much VAT. The Court held that where the supplier's mistake was due to an error by the State (forcing the supplier to charge VAT wrongly on an exempt supply, for example), the customer may be able to claim the over-charged VAT back directly from the State if the supplier is no longer in a position to correct the error (if they had gone out of business, for example). Such claims are not expected to be easy but where there is a lot of money at stake it could be a useful route to explore if you think you have been over-charged VAT by mistake.

HEALTHCARE

You may recall the item in a previous VATflash about recent press coverage suggesting the Government is to add VAT to cosmetic surgery. This is still causing concern as the Government have felt the need to re-state what the legislation actually says. In order to qualify for exemption, the treatment, cosmetic or otherwise, has to 'protect, maintain or restore' the health of the patient. It is easy to see the problems this will cause for some cosmetic surgery or dental work, for example, and it may also have an implication for procedures like IVF treatment if the political will was there to interpret the legislation strictly. For now though, we will have to wait and see how HMRC will approach it.

GAAR

The Government has been looking in some detail at a General Anti-Avoidance Rule. The report has been published by the project team and whilst a GAAR is almost certain to be introduced for direct tax, it was decided that one was not needed for VAT as the Halifax principle counteracts most VAT avoidance schemes. In fact the proposed direct tax GAAR cribs its principles from the Halifax VAT decision, where the two key points are that a transaction can be ruled out by the tax authorities if it achieves an aim contrary to the purpose of the legislation and was designed essentially with that purpose in mind. In other words, to artificially create a tax advantage not intended by the legislators. When this is introduced by the Government, expect HMRC to commence challenging all forms of direct tax planning, artificial or otherwise.

UNREGISTERED BUSINESS

Just a quick reminder that any small businesses that are trading above the VAT registration threshold have until 31 December 2011 to register for VAT or face a crackdown by HMRC. When a GAAR is introduced by the Government, expect HMRC to commence challenging all forms of direct tax planning.

PROPERTY INVESTIGATION TEAM

We have heard that HMRC have set up a property investigation team comparing properties

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registered in the Land Registry index against the VAT registration and option to tax records. The investigation team are currently focused on London but will inevitably widen the scope to cover the rest of the country if successful.

PHONECARDS

The UK legislation on vouchers and phonecards is highly confusing, caused originally by pressure from the retail sector to dilute the original draft legislation many years ago. Unfortunately, HMRC often rely upon it to argue for additional VAT revenue wherever they can. In fact, this causes problems across the EU where every member state treats such items differently, causing havoc for companies trading internationally as many find themselves taxed twice on the same transaction. The European Advocate General has recently given his Opinion in a recent case at the European Court which effectively discredits an entire section of UK VAT legislation. The final decision of the Court will

be several months away, but HMRC's response will be interesting.

IFAs

The current 'Retail Distribution Review' may have a significant impact upon IFAs advising on insurance products where the demarcation between commissions and fees is being changed which could affect whether the income is exempt from VAT or standard-rated. Currently, the changes only apply to insurance intermediaries but expectations are that similar changes will be brought in for wider financial services in the near future.

If you wish to review your circumstances or would like advice on any of the above please contact Veronica Donnelly on 0141 886 6644 or email veronica.donnelly@campbelldallas.co.uk.

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