



Your in-house VAT consultants

VATease VAT Newsletter February 2006

February's VATease newsletter contains articles relevant to opticians, hotels, and DIY Builders. It also comments on HMRC's efforts to combat MTIC fraud and bully boy tactics.

VAT and Opticians

HMRC have won a very important test case involving recovery of VAT under partial exemption. The case involved 4 franchisee branches of the well known optical chain of "Specsavers" but will be applied to over 400 other franchisees.

HMRC directed "Specsavers" must use the standard method for partial exemption purposes which gave a much decreased rate of VAT recovery on expenditure.

VATease Comment: Where you have optician Clients who have currently an agreed "floor area" special method, it is likely that HMRC will attempt to rescind them and replace them with the standard method. This is likely to mean that a reduced amount of input tax will be recovered to the detriment of your optician Clients.

This is, we believe, only the start of HMRC's revival of interest on opticians. We are aware that they are also "attacking" the apportionment of output tax with regards to the dispensing element of spectacle sales. So, as you can see, it is a 'double whammy' for opticians with HMRC perceiving there to be both input and output underdeclarations!

If you have any optician Clients then VATease would strongly advise you to inform them of HMRC's current activity on this particular trade. One of our Consultants, Terry Plant, has specialised in the retail optical trade for many years both as gamekeeper and poacher. He would be only too happy to discuss the above, either with yourself, or directly with your Client(s). Please feel free to contact him on 0121-778-4299, no obligation.

HM Revenue & Customs lose crucial MTIC Fraud Case and accuses accountants

The ECJ has ruled in a case crucial to HMRC's strategy for tackling missing trader fraud. Missing trader fraud costs the UK Govt. up to £2bn per year. It is usually perpetrated by companies who sell large volumes of mobile phones or computer chips and fail to pay the VAT collected to HM Revenue & Customs. HMRC had sought to deny others in the supply chain the right to claim input VAT on purchases of the products.

The ECJ has ruled that the status of a transaction cannot be affected by the intentions or actions of others further up or down the supply chain that a taxpayer could not have known about. HMRC has been using this argument to withhold a large number of sizable input VAT claims. This decision is likely to cost the Govt. many millions of pounds.

HMRC's increasingly misplaced attempts to combat this fraud have this month turned on accountants and business advisors. In a recent [letter sent to Accountancy Age](#) HMRC Chairman, David Varney stated "*A small number of tax advisers mistakenly see MTIC as some form of clever tax planning rather than a dishonest and criminal exploitation of the tax system.*"

VATease Comment: VATease condemns this attack by HMRC on professionals without any form of evidence. Fraud is illegal and VATease is sure none of its Client practices would condone it in any shape. The ACCA, CIOT and ICAEW [have done the same](#).

UK Govt seeks to reduce Fraud using Reverse Charge Procedure

In the continuing battle against missing trader fraud, HMRC are looking to change the way in which VAT is declared and paid on the goods most commonly traded by the fraudsters.

The UK Govt has applied to the European Commission for permission to introduce a reverse charge mechanism for supplies of mobile phones, computer chips and similar products. Reverse charge procedures require the purchaser to account for any VAT instead of the vendor thereby removing the opportunity for fraudsters to collect any monies without declaring them.

Three Year Limit - Transitional Period

In 1996 HM Revenue & Customs introduced legislation restricting reclaims of overpaid VAT to 3 years prior to the date of claim. Legislation was introduced without much notice and no transitional period. In 2002 an ECJ ruling forced HMRC to allow a retrospective transitional period of 6 months.

EMI Group Plc, having submitted a repayment claim in excess of £1.6 million dating back to 1987, has challenged the legality of the imposition of the 3 year limit. The VAT & Duties Tribunal has referred the question once again to the ECJ. If EMI wins this case it may be extremely expensive for the Government as many taxpayers could submit additional VAT reclaims.

Hotel and Conference Facilities

In December we highlighted reports about a concession by HMRC regarding the liability of 8hr and 24hr conference rates charged by hotels and conference centres. This month HMRC has [published a business brief](#) in which it confirms that a percentage of the conference rates can be treated as an exempt supply of a right over land (unless an option to tax has been made).

Hotels and conference centres that have previously treated such supplies as wholly standard rated can submit claims for the overpaid VAT. However, such claims may be tempered by restrictions on input VAT and / or the additional bookkeeping requirements of regular partial exemption calculations.

VATease may be able to help you assess the possible implications and any available refunds for you or your Clients.

DIY Builders Claims

A couple arranged for an unregistered builder to convert a barn into a dwelling. They submitted a DIY Builders Claim for goods they purchased and included some invoices made out to the builder. HMRC refused to refund the input VAT and the decision was upheld by the tribunal.

A DIY Builders Claim should only contain invoices made out to the person / persons submitting the claim.

Appeal Costs

Where a taxpayer has appealed to the Vat & Duties Tribunal and either won the case or HMRC has reverse or changed its decision, the taxpayer has been entitled to claim reasonable costs incurred in the process. Typically this has been made up of professional fees from VAT advisors and/or accountants.

In a recent income tax appeal (involving tennis player Andre Agassi), the Court of Appeal awarded Mr Agassi only the costs of the Counsel leading the case not those of the tax professional who had undertaken the majority of the preparation work. Whilst the rules governing VAT Tribunals are different VATease has already received indications from HMRC that it intends to challenge costs claimed for a VAT appeal on the basis of this ruling.

VAT Avoidance

The ECJ is due to issue its decision in the Halifax case on 21 February. If this goes in favour of HMRC it could give them powers to ignore transaction set up purely for the purposes of VAT avoidance.

The Advocate General suggested that, whilst the transactions should not be ignored, the implementation of such a scheme may be an abuse of rights. HMRC chairman has been quoted as saying "*We will be looking at the potential scope of using abuse of law arguments if the court confirms the view of the advocate general.*"

Stealth Tax?

It is increasingly becoming the opinion of the Consultants of this practice that HMRC are using stealth tactics to reach their increased targets.

The latest tool appears to be revisiting past case law, assessing who, in **their** opinion, is treating an item incorrectly and organising visits to see them with a view to assessing accordingly. In [Business Brief 01/06](#) HMRC use case law from 2001 to issue guidance that supplies of company formation together with printed company records is a single supply of standard rated services despite many companies having treated them as separate supplies of services and zero-rated goods for many years. The wording of the business brief is likely to cause many such companies to believe that this guidance is concrete and not simply HMRC's interpretation of the nature of the supplies.

VATease Comment: It seems arrogant of HMRC to decree that they understand the nature of these supplies better than the businesses who make them. Its own internal guidance recommends that each case must be considered in its own merit. Issuing a business brief such as this look like an attempt to bully a whole industry in one go into declaring VAT on supplies that may not require it.

Is iTunes to exploit a VAT Loophole?

The [Telegraph reported](#) that well known music download site iTunes may be about to move its UK operations to Guernsey. This, the Telegraph said, would allow it to supply its music free of UK VAT reducing the standard price of a music track from 79p to 67p.

[Macworld has reported](#) that Apple, iTunes' owner, has denied these reports.

VATease Comment: Although widely reproduced, the Telegraph report is actually technically incorrect. As an electronically supplied service, iTunes supplies would still be taxable in the UK and subject to UK VAT even if supplied from outside the EU.

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