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VATease VAT Newsletter March 2006

February saw a number of very important VAT developments, including changes to VAT avoidance schemes, the three year cap and interest on delayed repayments.

Halifax - The end of VAT avoidance

The biggest news of the past month was the ECJ decisions in the BUPA, Halifax and University of Huddersfield cases. All three involved VAT avoidance but it was the Halifax decision that could have the biggest impact on UK VAT payers.

VATease **issued a newsflash last week** summarising the ruling and its possible implications. If you wish to discuss how this could affect your or your clients business, please contact a VATease consultant.

HMRC have now issued a **Business Brief** giving their opinion on the decision and inviting all businesses that feel they may have been affected to approach them.

Disclosure of VAT avoidance schemes

HMRC's **Business Brief** also announces a change to the address to which VAT Avoidance Schemes must be disclosed. Businesses failing to use the correct address will not be deemed to have made the disclosure.

VATease Comment: A change of address after such a short period of time seems a little unfair on those businesses who have existing copies of published guidance and will now be making disclosures to the incorrect address.

Three year limit

In another case that may have costly implications for HMRC, the Court of Appeal has ruled that the 3 year limit should be disapplied in the case of a car dealer who failed to claim input VAT in 1989 and 1990.

VATease Comment: The full implications of this decision have yet to be determined. It may be that all businesses with overpaid or underclaimed VAT prior to 1 May 1997 will be entitled to submit claims. We strongly encourage anyone that may have such a claim to contact VATease immediately.

The 2006 Budget

The Chancellor has announced that this year's Budget Speech will be on 22 March 2006 at 12:30pm. As usual, VATease will be issuing a newsflash with a run down of VAT changes ready for reading over your breakfast the next morning.

D&A - Value of imported goods

The ECJ has ruled that the value of contact lenses supplied by D&A from The Channel Islands must include the cost of services supplied in the UK (examination, consultation, etc.). This puts them over the £18 limit under which goods can be imported free of VAT and Duty. Customers will now have to declare VAT and Duty before they can take delivery of their lenses

VATease Comment: This is the latest in HMRC's attempts to stop businesses working around the VAT laws by supplying goods from outside the EU. It will not, however, affect supplies made by Tesco's and other retailers who supply CDs and DVDs online from The Channel Islands.

Jersey to boot out CD and DVD retailers?

In related news, [the BBC reports](#) that Jersey has announced it will not renew licences for UK based CD and DVD retailers who use the island as a distribution base to avoid having to declare VAT. Jersey's Government wish to avoid the negative publicity such activities attract.

Interest due on delayed repayments

The High Court has recently ruled that HMRC should not take more than 30 days to investigate repayments due to mobile phone or computer parts dealers. Where repayments have been unduly delayed interest should be paid to the taxpayer at a rate 2.5% above base rate.

VATease Comment: Many dealers will have had repayment returns withheld for months whilst HMRC undertake "reasonable checks". There may be opportunities to claim interest from HMRC.

Imported works of art

The UK imposes an effective 5% VAT rate on imported works of art including the Auctioneers fees. The EC Commission considered this in contravention of the Sixth Directive and took the UK to the ECJ. The ECJ has ruled that VAT should be accounted for at the Standard Rate on the Auctioneers Fees.

Car Parking

Local Councils may be able to reclaim VAT declared on parking fees following a Tribunal ruling. The Tribunal decided the fees were not a business activity and were not therefore subject to VAT. This will not apply to commercial car park operators.

Dispensing Doctors

HMRC have **issued guidance** that will be of relevance to dispensing doctors.

"Following changes in Department of Health funding, effective from 1 April 2006, dispensing doctors who wish to recover VAT incurred on the drugs they dispense will need to register for VAT."

Changes to Land & Property

In the December 2005 Pre-Budget Report it was announced that there is to be a change to option to tax rules regarding bare land and demolished buildings. Legislation is to be changed such that an option on bare land will include any buildings subsequently constructed on it (but there will be an opportunity to revoke it upon completion). Further, an option on a building will remain extant on the land on which the building stood. If a new building is constructed there will be an opportunity to revoke the option upon completion. It is possible that this change could be implemented in the budget.

Flat Rate Scheme

Use of the Flat Rate Scheme for small businesses seems to be increasing steadily. Unfortunately, as it does so, so does the incidences of businesses implementing it incorrectly. The primary error appears to be the incorrect use of VAT exclusive figures when calculating the amount payable. The Flat Rate Payment is calculated by multiplying the VAT inclusive turnover figure by the Flat Rate Percentage.

Employment Agency Concession

Employment Businesses and similar will be aware of the long running review of the concession that allows staff to be supplied VAT free where the customer pays the employee directly and accounts for PAYE, NIC, etc. This review was supposed to end

last month. We understand that HMRC is still considering its position and that the concession will remain until such time as a further announcement is made.

Lap dances - Supplied by dancer or club?

Spearmint Rhino, owners of several lap dancing clubs, was in Tribunal recently. The company argued that dances were supplied to the customer by the dancers and that S should only account for VAT on the amount it received from the dancers. HMRC, predictably, ruled that the company was the principle for the supply and that the dancers received money its agent.

The Tribunal agreed with HMRC but asked the parties to make further representations regarding "tips" - additional amounts paid over the recommended fee for dances.

Massage Parlours

A massage parlour rented rooms (including a "fetish room") and provided other services to masseuses. It took money from customers as agent of the masseuses and charged a daily rent. The taxpayer argued it was supplying an exempt right over land with other ancillary services. The tribunal ruled that the individual elements of the supply combined to make a single supply of facilities on which the massage parlour should account for VAT.

SME Business Solutions

As an SME itself, VATease recognises the challenges faced by other SMEs. One of the resources we have come across recently is the [SME Business Solutions Website](#) which offers articles, newsletters and tools useful to such businesses. Membership gives benefits including access to the forums, free downloads and exclusive content.

If you require further information please contact us on 0121 778 4299.

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