



Your
in-house
VAT consultants

VATease VAT Newsletter December 2005

December 2005 sees VATease's 15th Birthday. November saw developments in VAT affecting hotels, internet retailers, the issue of securities and theatres. There are also rumours about the VAT rate and the criminalising of VAT avoidance.

Possible increase in VAT Rate

With the Pre-Budget Report due on 5 December, speculation is once again rife that the Chancellor will increase the UK VAT rate from 17.5%. This speculation has arisen before the Report and the Budget proper for several years. However, analysts point to several factors that would suggest an increase is due.

Opportunity for Hotels and Conference Centres

Accounting Technician has reported that HM Revenue & Customs have recently conceded that the supply of conference facilities under a 24-hour "delegate rate" may not be wholly Standard Rated. It may be possible to split the charge between a standard rated supply of facilities, food and hotel accommodation and an exempt supply of room hire.

Hotels and Conference Centres should review their supplies to see if savings can be made going forwards. Retrospective adjustments can be made for a period of up to 3 years.

VATease comment: AT's enthusiasm for retrospective adjustments may be a touch optimistic. Any savings generated will be reduced, at least in part, by a need to credit past customers and may also make the hotel partly exempt with a restriction on the amount of input tax it can claim.

Time That VAT is due on goods sold on the Internet

A Court of Session ruling last month will affect the time at which online retailers will have to account for VAT.

A company selling goods online argued at VAT Tribunal that the effect of Reg 10 of the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334), which gives customers the right to return goods up to 7 days after the supply, is that the goods are supplied on approval. Under the Value Added Tax Act 1994, s 6(2)(c), where goods are supplied on approval VAT is

not due until it is certain that they have been accepted. The VAT Tribunal agreed with the Company that VAT was not due until 7 days after the supply.

The Court of Session has ruled that the Tribunal erred in its decision. Under the website's terms & conditions, the goods were not supplied on approval. The Distance Selling Regulations did not change the nature of the transaction but gave the customer additional rights. Furthermore, customers paid for goods at the time they were ordered so VAT would always be due at the date of payment.

Refunds of VAT to Overseas Companies

Dawn Primarolo has recently made a written statement about changes to the rules governing 8th and 13th Directive refunds of UK VAT to overseas companies:

HM Revenue and Customs ... have been receiving an increasing number of claims for repayment of VAT under the 8th and 13th EC VAT Directives which have not been supported by all the required documentation, including valid VAT invoices. ... HMRC have therefore decided that they must tighten their procedures and have recently reminded businesses that claims must be supported by all the required documentation, and about what details a valid VAT invoice must contain. These rules apply equally to all businesses and are no different to the rules that apply domestically for businesses seeking to recover VAT incurred on their purchases.

Issue of Shares, Bonds, Loan Notes and Debentures

HM Revenue & Customs have published further clarification following the ECJ ruling in the Kretztechnik case. It now accepts that the principles it previously announced as applicable to the issue of shares, reported in our [July Newsletter](#), also apply to other types of shares and securities issued by both public and private companies for the purpose of raising capital.

Businesses who have made these types of supplies in the last 3 years may be able to make retrospective claims of VAT on costs related to them.

Partial Exemption Special Method - Floor Area Method

The Tribunal has recently agreed with HM Revenue & Customs when it terminated an optician's floor area based special partial exemption method. The Tribunal stated that less than half of the optician's "non-attributable" costs related to the building and less than half of the floor area was wholly used for either taxable or exempt purposes, making a floor area method unreasonable.

Foreign Exchange Transactions

Following a ruling by VAT Tribunal, under certain conditions, HMRC will accept that input VAT relating to Foreign Exchange transaction may be treated as relating to a business as a whole and input tax claimable as a business overhead subject to the normal rules.

Damp Proofing and Insulation - Approved Alteration to a Listed Building

The VAT Tribunal has ruled that damp proofing and insulation work carried out on a protected building was an "approved alteration" making it eligible for zero-rating. This will be of interest to anyone who is renovating or converting a listed building or who has done so recently.

Personalised Registration Number

A publican, Mr Hooper, purchased the number plate H 002 PER from the DVLA and recovered the VAT. HMRC refused the VAT reclaim on the basis that this was a purchase for personal purposes. The VAT Tribunal ruled that, in this particular case, the link between the registration number and the business was clear enough that the modest amount of VAT incurred could be deducted.

Discretion to Issue Assessments

Many accountants and businesses that have dealt with VAT assessments from HM Revenue & Customs will have been informed that HMRC has no discretion on whether an assessment is raised or not. The VAT Tribunal discredited this assertion last month.

A company charged VAT on a number of transactions that were in fact outside the scope of VAT. When payment was not made in relation to some of these the company claimed Bad Debt Relief. HMRC issued an assessment reversing the Bad Debt Relief claim. The Tribunal, in its decision, stated:

'the Commissioners ... have a discretion in the matter of making an assessment. The enabling provisions use the word "may" ... the effect of what the Commissioners have done is to attempt to secure to themselves a sum of money which never was due in reality' [The Commissioner of HMRC did not] 'consider whether they are justified in seeking, obtaining or retaining this windfall which in our view would be a matter of unjust enrichment, before making an assessment like the present. As a public body they have to consider the appropriateness of the whole circumstances, and not to seek a manifestly unfair advantage. ... There is something deeply unsatisfactory about a Government department relying upon accounting procedures to create a taxable transaction which did not exist in the particular circumstances of this case.'

Theatrical Productions

A theatre that applied the cultural exemption to its ticket income paid a VAT registered production company to stage a number of shows. The theatre treated the cost as relating both to the exempt ticket income and taxable sponsorship income and reclaimed the VAT in part. HM Revenue & Customs argued that the cost related wholly to the exempt ticket income and VAT was not claimable at all. The VAT Tribunal dismissed the theatre's appeal agreeing with HMRC that the input VAT was not allowable.

The interpretation of the "Cultural Exemption" has recently been expanded and many theatres that had been accounting for VAT on ticket sales are now treating them as exempt from VAT. HMRC appear to be using this argument about production company expenses to reclaim some of the lost revenue. Theatres who have applied the exemption may receive a VAT visit in the near

future. However, it may be possible to challenge the application of this tribunal decision where taxable sponsorship income is closely linked to the putting on of a production.

Late payment of a return - deadline missed by 5 minutes (yes minutes)

A company missed a bank imposed deadline to set up an electronic transfer of his VAT return payment by 5 minutes and the payment then reached HMRC late. The company director admitted that he had not enquired with the bank about any deadlines and was not therefore aware of it. The Tribunal ruled that this did not constitute a reasonable excuse for late payment and that the default surcharge applied to the VAT return should stand.

HMRC to stamp out VAT avoidance by 2008

HM Revenue & Customs have reportedly set themselves a deadline of 2008 to eradicate VAT avoidance, the use of VAT legislation to minimise VAT liabilities. HMRC consider that a successful (for them) outcome in the ECJ case regarding "Halifax" would make any VAT avoidance scheme illegal if it is undertaken with the aim of avoiding VAT.

VAT affects use of City Academy facilities.

The website of [MP Simon Hughes](#) reports that the peculiar effects of VAT mean that the recently opened City Academy at Lynton Road cannot open its doors to the community without facing a multi-million pound VAT bill.

VATease celebrates its 15th birthday

VATease celebrates its 15th birthday this month. To coincide with this celebration [VATease is launching its new-look, expanded website](#) which also includes archive copies of newsletters issued since March 2003.

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

Newletter management and distribution is done for VATease by [Ezine Director](#). Anyone wishing to [subscribe](#) can do so online.

This newsletter is designed to keep readers abreast of current developments. No liability is accepted for errors, omissions or opinions it contains or for any reliance placed on this newsletter. This newsletter is intended for general guidance only. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the authors or publishers. On any specific matter, reference should be made to the appropriate advisor.

© Copyright 2005 VATease Ltd. VATease actively encourages you to copy, distribute and display this newsletter for both commercial and non-commercial purposes. However, it must be clearly attributed to VATease Ltd and must not be altered, transformed, or built upon (including this paragraph) without the express permission of VATease.



(including acquisitions from the EC)

Lift the weight to our shoulders and contact us.