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VATease - VAT Newsflash - The end of VAT Avoidance?

The ECJ delivered a decision yesterday that could spell the end of VAT avoidance schemes that have no other commercial justification. The case, involving Halifax Building Society (as was) appears to introduce into British VAT law an "abuse of rights" principle.

The Government have been quick to announce that this will be a powerful weapon in their fight against VAT avoidance. Other commentators have been less certain about the possible impact of the decision with some even stating it appears to be a loss for HMRC.

The ECJ ruled that a series of transactions undertaken by Halifax were genuine economic activities despite being for the sole purpose of allowing input VAT recovery that would otherwise have been restricted. However, if the National Courts determine that the scheme constitutes "an abusive practice", one that gives a result contrary to the intention of the EC 6th Directive, it should not give rise to a right to deduct input VAT.

It would appear that the ruling does introduce an "abuse of rights" principle, but the principle is very restricted and only applies where "essential aim of the transactions concerned is to obtain a tax advantage".

The ECJ went on to rule, "Where an abusive practice has been found to exist, the transactions involved must be redefined so as to re-establish the situation that would have prevailed in the absence of the transactions constituting that abusive practice".

VATease believes that this could become a powerful weapon for HMRC in their war against VAT avoidance. It won't however stamp it out completely. One thing is certain; VAT lawyers are going to be very busy in the near future determining how this ruling should be interpreted.

If you or your clients have implemented schemes with the intention of generating VAT savings, please feel free to contact VATease's consultants for individual advice on how this ruling could affect you.

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

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