



Repayment of Input VAT

Don't forget; if you don't pay your suppliers within 6 months, you must repay any input VAT claimed

Your in-house VAT consultants

VATease Monthly VAT Newsletter August 2006

August's VATease Monthly VAT Newsletter contains more developments on missing trader fraud, the three year cap and a consultation on the VAT registration form.

Flat Rate Scheme - Category of Business

A business using the Flat Rate Scheme that has more than one business activity should apply the flat rate appropriate to activity with the largest turnover.

In a **recent Tribunal case**, a couple running a pub declared their flat rate payment at the rate appropriate for pubs (now 5.5%). During a VAT visit the inspecting Officer discovered that their income from food exceeded their income from drink. She ruled that the partnership should instead have used the rate appropriate for restaurants (12%). The Tribunal upheld the Officer's decision.

David Varney leaves HMRC

Sir David Varney, Chairman of HM Revenue & Customs, will quit his role on 1 September.

The former Chairman of MM02 has been in the role just 2 years and his resignation has drawn some criticism with HMRC facing difficulties in the Tax Credits system, VAT fraud and still wrestling with the effects of its recent formation from the merger of the Inland Revenue and HM Customs & Excise.

Sir David will continue to advise the Treasury on the Transformational Government Strategy, as announced in the 2006 Budget, until he leaves the Civil Service at the end of the Year.

The three year cap - current position.

There have been 2 recent Court of Appeal judgements that would appear to have overturned the application of the 3 year cap to periods prior to its introduction; Fleming t/a Bodycraft and Condé Nast (the publishers). However, HMRC has appealed the Fleming case to the House of Lords and is expected to appeal the

Condé Nast case also. HMRC is not therefore currently accepting claims for VAT paid prior to the 1997 introduction of the cap at this time.

If Fleming and/or Condé Nast are successful at the House of Lords then there will be an opportunity to reclaim VAT overpaid prior to the 3 year cap introduction. However, as there is no time limit yet applicable for the submission of such claims there is no need to submit a protective claim.

VATease understands HMRC are to publish a Business Brief in the near future setting out its view of the current position.

If you have a possible claim for overpaid or underclaimed VAT prior to 1997, VATease recommends that you await the publication of the Business Brief or the outcome of the House of Lords hearing in the Fleming case. If that goes against HMRC you will be able to submit a claim for the VAT overpaid.

Missing Trader Fraud - Reverse Charge System

In a bid to combat the huge levels of missing trader fraud, the UK Govt. applied in January for a derogation from EU VAT law allowing it to introduce legislation making the sale of mobile phones, computer chips and some other goods subject to a reverse charge mechanism. Recent newspaper reports have suggested that the EU could approve the application at some time in the Autumn.

Austria and Germany also applied for a similar derogation but intended to apply the reverse charge scheme to a much wider range of transactions. The EU refused this application saying it was a disproportionate response and deviated too far from the way VAT is intended to work.

Missing Trader Fraud - New Case Law

A previous weapon in HMRC's war against missing trader fraud was to refuse input VAT claims from anyone buying goods that were used in a fraud. This was overturned by the ECJ in the joint Bond House Systems / Optigen case. The case involved companies who had unknowingly purchased goods that had been sold in a circular series of transactions where one of the parties in the circuit had failed to account for the VAT. HMRC had argued that the transactions were for the purposes of fraud not for business purposes. The VAT shown on invoices was not, therefore, VAT and could not be reclaimed. The ECJ ruled that the nature of a transaction could not be affected by the intentions of other persons in the supply chain that the purchaser could not have been aware of.

A further recent case, [Axel Kittel](#), refined this principle adding "*where it is ascertained ... that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent*

evasion of value added tax, it is for the national court to refuse that taxable person entitlement to the right to deduct".

VATease understands that many repayments due to dealers in mobile phones and computer chips have been suspended for up to 5 months pending investigations into whether the dealer could or should have known that the transactions it entered into were part of a VAT fraud.

Booking Fees

In our **June 2006 newsletter** we reported on a Court of Appeal case lost by HMRC. The Court ruled that a booking fee charged by a ticket agent could be treated as an exempt "card handling" fee.

The House of Lords has rejected HMRC's request for leave to appeal the Court of Appeal decision bringing the issue to a close.

Business Briefs 8, 9 & 10

HMRC has issued 3 business briefs in the last month.

- Business Brief 8/2006 includes items on the outcome of the consultation regarding beneficial ownership of land and property (summary - no change), clarification of the treatment of travel agents funded discounts and the issue of VAT Notes 2 of 2006
- Business Brief 9/2006 covers HMRC's policy following the Court of Appeal's decision in of Newham College. The decision concerns the application of the Option to Tax under anti-avoidance rules.
- Business Brief 10/2006 outlines the proposed introduction of the reverse charge procedure to tackle missing trader fraud.

Review of VAT Registration Application Form

HMRC is undertaking a review of the VAT registration application form. The review asks the following questions:

- Is the layout of the form user-friendly?
- Do you understand the questions?
- Are you able to navigate easily through the form?
- Do you identify any particular problems?
- Do you have any views or suggestions on how we could further improve the form?
- Do you find the notes helpful?
- Have we explained the technical terms properly in the notes?

- Do you have any views or suggestions on how we could further improve the notes?
- Do you agree with HMRC estimates that the new form should take approximately 15 minutes less time to complete than the current version?
- If you do not agree, can you please say what your estimate would be of time saved, or additional time taken?
- Is there anything else you wish to say about this consultation?

Responses are required by 31 August 2006. VATease is preparing its own responses but welcomes input from Clients and newsletter readers.

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

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