



Flat Rate Scheme

The Flat Rate Scheme may help to reduce administration and could reduce your VAT payments

Your in-house VAT consultants

VATease Monthly VAT Newsletter September 2006

VATease's September 2006 Monthly VAT Newsletter contains items about the 3 year cap ruling, delays in issuing gaming machine licences and claims by football clubs for VAT on agents' fees.

3 Year Cap

Last month HM Revenue & Customs issued a **Business Brief** setting out its position following the **Fleming (t/a Bodycraft)** and **Condé Nast Publications Ltd** and **VATease issued a Newsflash** last month.

HMRC is now inviting claims from businesses that have overpaid output VAT before December 1996 or underclaimed input VAT before April 1997. However, they require an undertaking that the business will repay the claim plus interest if the House of Lords decides in favour of HMRC in the upcoming appeals.

Businesses in a position to make such a claim should **contact VATease immediately** for assistance.

Delay in issuing Amusement Machine Licences

HMRC has issued a notice to reassure those operators who are still awaiting their Amusement Machine Licences. Due to changes in the 2006 Budget there were high volumes of new licence applications. Unfortunately these applications could not be processed until new legislation was implemented on 1 August 2006 and a large backlog has therefore been generated.

HMRC advise that anyone who has submitted a properly completed application form with payment (or application to pay by instalments) is legally covered to provide amusement machines. Unfortunately, HMRC staff are so busy processing applications that they are not able to confirm receipt of an application or payment or whether there are any queries about the application form.

Football Clubs unable to reclaim VAT on Agents fees

With the football player transfer window just closed and, reportedly, activity higher than ever, HMRC has just won a timely VAT Tribunal case that will increase costs of professional football clubs significantly.

In a case involving Newcastle United Plc, the Tribunal ruled that the services of the agents of players are supplied to the players not the clubs involved. Despite having made payments to agents, Newcastle was not entitled to recover input VAT on those payments.

This ruling will affect all clubs that make such payments. However, it has been reported that Newcastle United intend to appeal the Tribunal decision. The Tribunal has also withdrawn the published decision stating "a revised one is to be issued shortly".

Supply of Catering

Following the Compass Contract Services Limited Court of Appeal case we **reported on in July**, HMRC has, in **Business Brief 12/06**, published its interpretation of the change to the rules governing the supply of food for consumption "on the premises".

HMRC now accept that retailers operating from "restricted access sites" need only treat the immediate unit from which they operate as their "premises" for the purpose of determining whether cold food they sell is subject to VAT.

Ciabatta Melts - Zero Rated

Similar to the 2004 ruling on **toasted baguette sandwiches**, the **VAT Tribunal has recently ruled** that "ciabatta melts" were heated to improve the taste and not so as to sell a hot product. Therefore, provided they aren't advertised as hot food they are cold food for VAT purposes and zero-rated if sold for consumption off the premises.

DIY Builders Scheme

A couple demolished an existing property due to its insubstantial foundations and constructed a new property. However, they retained a small proportion (possibly less than 2%) of the original structure.

The couple submitted a DIY builders' claim for the costs incurred but this was refused by HMRC. As the original building had not been completely demolished the work carried out could not be the "construction of a new dwelling". The Tribunal agreed.

VATease Comment: If retention of the wall had been a part of the planning consent then the claim may have been valid. Persons undertaking construction projects are advised to consider the requirements of the scheme at an early stage in the project.

Another Tribunal Case has confirmed that HMRC are not required to refund VAT where contractors have incorrectly charged it at 17.5% instead of 5%.

MTiC Fraud - A Cautionary Tale

As HMRC close the VAT loopholes that allow fraudsters to perpetrate the massive amounts of VAT fraud using mobile phones and computer chips, the fraudsters appear to be attempting similar frauds using other goods. However, in many cases the goods described on the invoices do not, in fact, exist.

The VAT Tribunal recently ruled on a series of transactions that purportedly involved a large amount of expensive, specialist golf clubs, agreeing with HMRC that on the balance of probability the goods never existed. The company involved was refused credit for the input VAT of over £1 million that it claimed. HMRC used expert witnesses from the golf club industry to convince the tribunal that trade in such large quantities of very specialist, hand made clubs sold by the manufacturers only to licensed dealers was extremely unlikely.

It is worth noting that fraudsters often involve unwitting businesses in the supply chain. However, ignorance may not be a defence against a VAT assessment if a business has not undertaken reasonable checks into the probity of suppliers and customers and the credibility of the transaction.

As always, if a deal appears to make you something for nothing and is too good to be true, you should approach it with extreme caution.

HMRC has issued new guidance on how to avoid becoming unwittingly involved in a MTiC fraud.

Burden of Tax Administration

Deloitte & Touche has recently issued a report stating that the burden on business of tax administration compares favourably with other countries but that HMRC is looking to reduce it still further. The Department aims to reduce the burden of audits and inspections by 15% in 3 years.

Escort Agency - Whether agents or principle

Portman Escort Agency, a London based escort agency, **found itself at Tribunal** recently when HMRC assessed it for VAT on the full value of monies paid by customers to the escort girls. The agency considered itself to be acting as an agent

for the escorts and liable therefore for VAT only on the commission charged to the escorts.

Whilst the subject of the Appellant's activities makes the case mildly entertaining, it serves as a good example of the difficulties in setting up an agency arrangement such that HMRC will accept. In this case the Tribunal ruled that Portman was acting as an agent despite some of the contractual evidence suggesting otherwise. However, this is a situation that may possibly have been avoided if set up properly.

Condoms - Medical Product zero rated when sold to charity

Pasante Healthcare Ltd sold condoms to charities running family planning centres. It treated this sale as zero rated under the specific rules regarding supplies of medical products to charities in VATA 1994, Schedule 8, Group 15, Item 9. The Tribunal agreed that condoms are medical products for VAT purposes even though they are specifically not medical products under healthcare legislation.

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