



Your in-house VAT consultants

VATease Monthly VAT Newsletter July 2006

July's VATease Monthly VAT Newsletter is slightly longer than usual. It covers responses to recent enquiries VATease has received on Fruit Machines and Care Homes and includes an item that will be of interest to Charities.

Fruit Machines - Exempt From VAT?

VATease has received many enquiries recently from businesses that have heard rumours a recent ECJ case means income from fruit machines can be treated as exempt and VAT declared to HMRC reclaimed.

The case in question, [Edith Linneweber](#), was about German VAT law, which makes fruit machine income taxable in unlicensed premises but exempt in licensed premises. The ECJ said that this broke the rules of "fiscal neutrality".

UK law does not create a different treatment in licensed and unlicensed premises and is not therefore directly affected by this ruling. However, until 6 December 2005, the income from Fixed Odds Betting Terminals ("FOBTs"), the roulette style video terminals available in casinos and betting offices, was treated as exempt. Some larger fruit machine operators argue that this different treatment to fruit machines is against the rules of "fiscal neutrality" and that fruit machine income should therefore be exempt. Some very large claims for VAT going back 3 years have been submitted.

VATease Comment: FOBTs were created, in part, to exploit a loophole in VAT law. Fruit machine income was taxable because the machines themselves determined how often they would pay out. FOBTs simply connected to a remote computer that determined this and VAT law was not written to include these as taxable machines. The 6 December 2005 change corrected what HMRC saw as an omission in VAT law. There has always, therefore, been a fundamental difference between fruit machines and FOBTs. VATease does not believe there is much merit in the attempt to have fruit machine income treated as exempt. However, if any operators would like to submit a protective claim for VAT declared VATease will be happy to assist with the calculation and/or submission to HMRC.

Care Homes - Registration For And Reclaim Of VAT?

A number of accountants and "cost reduction" agencies are marketing an opportunity for care homes to reclaim "hundreds of thousands of pounds" of VAT. Accountants

with care homes clients may wish to act to approach their clients and discuss this issue with them.

Following an ECJ case, it has been ruled that supplies by care homes during the period 1993 to 2002 could be treated as taxable. Any care home that was not already registered for VAT during this period may be able to apply for registration. They will need to account for VAT on their income during the period and will, in turn, be able to reclaim VAT on the associated costs.

There are some fairly obvious pitfalls to this action. Care homes will not wish to and will likely be unable to make additional charges to any private clients and would have to stand VAT on this income themselves. The scheme will only therefore be attractive to care homes whose income comes, almost exclusively, from local authorities. Further, the care home will need to be certain that it can invoice the additional VAT to the local authority. This will require a contract stating explicitly that the price quoted is VAT exclusive or a local authority that is prepared to accept an additional VAT charge.

VATease Comment: VATease believes this is not quite the opportunity that marketing material currently being issued suggests. However, if any care home wishes to examine the possibility of making a claim for VAT incurred during the period 1993 to 2002, VATease will be happy to advise and assist. Accountants with care home clients may wish to raise this issue with their clients.

Matters Likely To Be Subject To Criminal Prosecution

In a slightly bizarre move, HMRC has withdrawn an amendment to Notice 700 (The VAT Guide) that was released just a month earlier. The amendment detailed matters where HMRC would be likely to seek a criminal prosecution. The original gave some details and referred to [HMRC's online Criminal Investigation Policy statement](#) but has been withdrawn. There will now be no reference in The VAT Guide.

Reduced VAT Rate On Contraception Takes Effect

HMRC has issued a [press release](#) highlighting the reduction in VAT rate on retail contraception that takes effect from 1 July 2006. The reduction was first announced in the 2006 Budget. In addition to condoms and other contraceptives sold in retail outlets it will, of course, affect contraceptives sold in vending machines.

Supplies Of Cold Food - Catering?

A recent Court of Appeal decision will affect any food retailers that operate outlets on others' premises. A sale of cold food for consumption "off the premises" is zero-rated (with some exceptions). A sale of cold food for consumption "on the premises", e.g. at a café or sandwich bar, is a standard-rated supply of catering.

Compass Catering operated 6 outlets at BBC Television Centre. HMRC ruled that the whole of BBC Television Centre was the "premises" relevant to Compass and that sandwiches it supplied should be standard-rated. Compass argued that only the immediate surroundings to its outlets should be considered the premises and that sandwiches sold for people to eat in other areas of BBC Television Centre should be zero-rated.

The VAT Tribunal and then the Court of Appeal agreed with Compass and HMRC has recently announced that it will not appeal the decision. This may affect all businesses running outsourced cafeteria etc. and may even extend to non-outsourced employee food outlets.

Missing Trader Fraud - Reverse Charge

HMRC has made several amendments to the proposed legislation for the Reverse Charge intended to combat Missing Trader Fraud. The changes allow HMRC to require businesses to submit reports of supplies affected by the reverse charge.

The legislation will not come into effect until and unless the UK Govt. obtains a derogation from the EC. With levels of Missing Trader Fraud climbing across the EU, it is expected that this derogation will be given and the legislation may be replicated across other Member States. HMRC is honing the rules in anticipation of their implementation.

Missing Trader Fraud - Interest On Late Repayments

A company submitted returns showing VAT repayments due. HMRC delayed the repayment whilst it investigated the possibility that the goods on which input VAT was being claimed had been used as part of a Carousel Fraud. The repayments were eventually made. The company claimed interest and the QB agreed ruling that 30 days was long enough to undertake reasonable checks and any period beyond this would attract interest on the repayment at 2.5% above base rate.

Charities - HMRC To Reject Court Ruling?

In our [September](#) and [November](#) Newsletters last year we covered the outcome of a court case regarding charity fundraising activities. The court case appeared to create an opportunity for charities to reclaim VAT paid to fundraising organisations.

The Charity Finance Directors' Group reports that HMRC may not be intending to follow the ruling given in the court case. Charities appear to be receiving significantly less than they were expecting and some are likely to pursue further legal action.

HMRC Spring 2006 Report

HMRC has released its [spring quarter report](#). The report details the achievements and failures of the department in its Govt. remit. There's very little in it of relevance to day to day business activities but some can make interesting reading.

EC Sales Lists - End Of Plain Paper Submission

With effect from 31 July 2006, the ability to submit EC Sales Lists on plain paper will be withdrawn. This has generally been used by businesses who print out their sales lists from computer accounting systems. HMRC are reminding businesses of the ability to submit EC sales lists online.

"Virtual Leases"

In [September 2005](#) we reported on a case where Abbey National had created what it called a "Virtual" lease. Abbey assigned a lease to a 3rd party in a situation where the head lease did not allow it to do so. The 3rd party then "leased" the property back or to the existing tenants.

The Court of Appeal has recently overturned the part of the [High Court decision](#) pertaining to properties leased back to Abbey. It has ruled, because the assignment by Abbey to the 3rd party didn't allow the 3rd party to occupy the property, the supply back to Abbey could not be a right over land and was therefore not exempt from VAT.

This case shows the difficulty in applying VAT to situations where the economic benefit of a right over land is separated from the legal title. There are currently Stamp Duty Land Tax planning schemes being sold that require such a separation and the VAT treatment will need to be considered very closely.

VAT Notes 2 2006

HMRC has released [the second VAT notes of 2006](#) and it will be included with the next VAT return of all registered businesses. As we have previously stated, VAT & Duties Tribunals have in the past therefore ruled that businesses can be assumed to be aware of any information contained in them.

All VAT registered businesses must therefore make themselves aware of the contents of VAT Notes and take action on anything affecting their VAT declarations.

This edition of the notes includes:

1. A list of revised and updated VAT Notices
2. The sale of returned goods supplied under finance agreements
3. A review of the scope of the VAT exemption for medical services

4. Off- street car parking provided by local authorities
5. An invitation to contribute to the HMRC review of the hire of staff by employment bureaux
6. Clarification of the treatment of MOT testing fees
7. Online submission of VAT returns and automatic reminder
8. Quoting VAT registration numbers on CHAPS and BACS payments to HMRC
9. Matters Likely To Be Subject To Criminal Prosecution

Rally Cars - For A Business Purpose

A Northern Ireland company purchased 2 rally cars that were used by the managing director in races. The cars showed the company's name and the company claimed the VAT on the purchase arguing that the expense had a business purpose. The Tribunal agreed and overturned an assessment issued by HMRC. This case may be of use for anyone considering whether expenditure is for a business or non-business purpose.

Construction Of A Synagogue - Zero Rated

HMRC ruled that a synagogue, built in the grounds of an existing synagogue, did not qualify for zero-rating as it was an extension to an existing "synagogue complex" and not a new building in its own right. **The VAT Tribunal disagreed**, finding that there was not a complex. Being a new building for a charitable purpose the synagogue qualified for zero-rating.

Betting Offices - Partial Exemption Method

A large number of betting offices are currently finding themselves having to register for VAT following the change in liability of Fixed Odds Betting Machines in the 2006 Budget. Such businesses will be partly exempt and will have to allocate input VAT and complete a partial exemption calculation.

In a **recent VAT & Duties Tribunal decision** a betting office treated the VAT on the subscription to the racing broadcasts shown in its premises as relating to both taxable and exempt income and, therefore, recoverable in part. The Tribunal agreed.

£50 of LexisNexis Tolleys' VAT Conferences

VATease has secured a £50 discount for any of its newsletter subscribers who wish to attend two VAT conference being run by LexisNexis Tolleys in September 2006.

The 2 conferences cover VAT and the Retail Sector and VAT Avoidance and Planning on 13 and 14 September respectively. For more information **see our website**.

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

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