

UK VAT Update

Whilst HMRC has become more aggressive in its pursuit of VAT receipts and its attempt to recover the VAT element of the UK tax gap, there have been some significant wins for the taxpayer in recent VAT cases. This article shall focus on some recent case law over the past year and on some areas of interest where there is a risk of a business or organisation inadvertently under declaring output VAT. I shall also focus on some areas of potential VAT savings in the area of VAT and property.

COMPOUND INTEREST

One of the most recently reported cases is the case of Littlewoods Retail Ltd [2014] EWHC 868 (Ch) in which the taxpayer won a VAT dispute with HMRC in the High Court. The case dealt with the issue of the nature of interest to be paid by HMRC on VAT overpayments. The taxpayer contended and won the argument that it should receive compound interest, whereas HMRC had paid only simple interest. It is reported that the High Court's ruling could cost HMRC more than £1bn and due to the significance of the ruling it is not surprising that HMRC has appealed this decision.

HMRC has received permission to appeal the judgement to



BY LYN HAGAN

In this article Lyn reviews recent VAT case law and writes on some of the areas where there is a risk of inadvertently under declaring output VAT.

the Court of Appeal and has issued Revenue & Customs Brief 20/14. It is noted that the case was exceptional and in the Littlewoods' case it was held that simple interest did not provide the 'adequate indemnity' which was commensurate with the loss suffered by this taxpayer taking into account the length of time for which the interest was payable and the high rates of interest applicable for part of the period. In their Brief HMRC state that "HMRC does not agree with the judgment and considers it to be at odds with the requirements of European law and how Parliament intended VAT law to work." Accordingly, HMRC advise that they shall

continue to refuse new requests for compound interest and will apply for any claims for compound interest already lodged with the High Court or County Court to continue to be stayed pending the final determination of the Littlewoods litigation.

VAT SURCHARGE

Whilst there have been a number of reported wins for HMRC in relation to the lack of reasonable excuse when appealing a VAT surcharge, following *Energys Holdings UK Ltd* [2010] UKFTT20 (TC) HMRC has now lost a further VAT surcharge case on the basis of proportionality. This most recent case is *Trinity Mirror Plc* [2014] UKFTT 355 (TC), whereby the First Tier Tribunal decided that a default surcharge of £70,900 for being one day late was disproportionate. As a win for the taxpayer and as the Tribunal has no discretion to reduce the surcharge, the surcharge was cancelled in its entirety in both these cases. It should be noted however in the case of *Total Technology (Engineering) Ltd* [2012] UKUT 418 (TCC) where the VAT surcharge was significantly less in quantum, being only £4,260, the Upper Tier Tribunal upheld the VAT surcharge decision on the grounds that it was not disproportionate. The VAT surcharge in the *Energys* case was £131,881 and related to only one

day of delay. It can be seen that each case shall be decided very much on its own facts.

VAT REGISTRATION

A requirement to register for VAT can arise in circumstances where a business does not necessarily expect it. In relation to this, examples of circumstances where VAT registration will be required include:

- A liability to register for VAT where the value of goods imported from other EU countries exceeds the UK VAT registration threshold (currently £81,000 from 1 April 2014) or because the level of deemed supplies which are required to be accounted for under the reverse charge mechanism exceeds the VAT registration threshold.
- Compulsory registration of businesses based outside the UK making supplies in the UK.

Deemed Supplies of Reverse Charge Services

Such supplies and the requirement to register for VAT can be difficult to identify in particular for individuals or entities which are not registered for VAT and not otherwise required to be registered for VAT. They can also be difficult for such businesses and organisations to understand; however, they can have costly consequences in giving rise to a requirement to register for VAT and the likelihood of a VAT cost which was not expected, depending on the overall impact of VAT registration.

Compulsory UK VAT registration

The VAT registration threshold is no longer available to non UK established businesses who are treated as making supplies in the UK. This is primarily (but not necessarily exclusively) relevant to businesses which supply, for example, land related services or services which are treated as supplied where performed such as artistic, cultural, educational or sporting services. After 1 January 2015, this will also include the B2C supply of telecommunications. HMRC must be notified within 30 days of the UK vatable supplies being made or immediately where there is an expectation that UK vatable supplies shall be made within the next 30 days.

The removal of the VAT registration threshold in such circumstances has now been in place since 1 December 2012 and if a business is not established in the UK but is receiving income from customers within the UK or sells goods which are in the UK at the time of the sale, consideration should be given to whether a UK VAT registration is required. This will include consideration as to whether the business is making supplies in the UK under the place of supply rules and whether such supplies are subject to UK VAT by the supplier or whether the reverse charge mechanism is applicable resulting in the customer being liable to account for the UK VAT. Such a review would take into account if the supplies are exempt or perhaps vatable but zero-rated under UK VAT legislation.

Such a VAT review is also of general application to all businesses

carrying on cross-border activities to ensure correct accounting for VAT in the relevant jurisdiction and to ensure that all relevant conditions are complied with to avail of reliefs and transferring of VAT accountability to the customer where applicable.

VAT AND PROPERTY

Storage Facilities

VAT on property raises its complex head again in relation to HMRC's VAT Information Sheet 10/13 VAT: Provision of Storage Facilities. Whereas the relevant legislation resulted in the provision of storage facilities becoming standard rated from 1 October 2012, there has been confusion and the VAT Information Sheet 10/13 has clarified that the legislation was not restricted to specialist self-storage providers but also extends to any landlord who lets property and the property is utilised by the tenant primarily for storage.

Housing Renovation & Repair

There has been a widespread call for a general cut in VAT in the UK on housing renovation and repairs to reduce the VAT rate from the standard rate of 20% to the reduced rate of 5%. Some other EU countries have already implemented this and pending any change in the UK should it arise, it is worth noting that currently there are a number of areas in relation to housing renovation and repair that already attract a rate of 5% and those which are already zero-rated, some of which are not always widely known about by suppliers or customers.

These include qualifying services in relation to:

5% VAT Rate Applicable:

- Renovation or alteration of empty residential premises that have been unoccupied for more than two years.
- Installation of energy saving materials; and grant funded heating system measures and qualifying security goods.
- Conversion (other than for a housing association) of a non-residential building into a qualifying dwelling or communal residential building.
- Conversion of residential buildings to a different residential use.
- Installation of mobility aids for the elderly for use in domestic accommodation.

Zero-Rated

- Conversion for a housing association of a non-residential building into a qualifying dwelling or communal residential building.
- Alterations to suit the condition of people with disabilities.
- First time gas and electricity connections.

If all the necessary conditions can be satisfied, the VAT cost savings can be significant on property developments; some examples in practice have given rise to significant savings in relation to the refurbishment of a portfolio of run-down vacant housing; redevelopment of an apartment block changing the size and number of apartments; conversion of houses to apartments and vice versa, and conversion

of a commercial building into a nursing home.

SUMMARY

VAT changes continue in abundance and as you relax with your latest 99p music download, just remember when the price increases (as it is predicted to do) the increase will mostly if not in whole be due to the fact that you will be paying local VAT on that download! This is courtesy of the VAT loophole closure from 1 January 2015 which has been in the pipeline for a while, having been implemented into European legislation in 2013 via Directive 2008/8/EC. The relevant legislation will be enacted into UK law through the Finance Act 2014.

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