

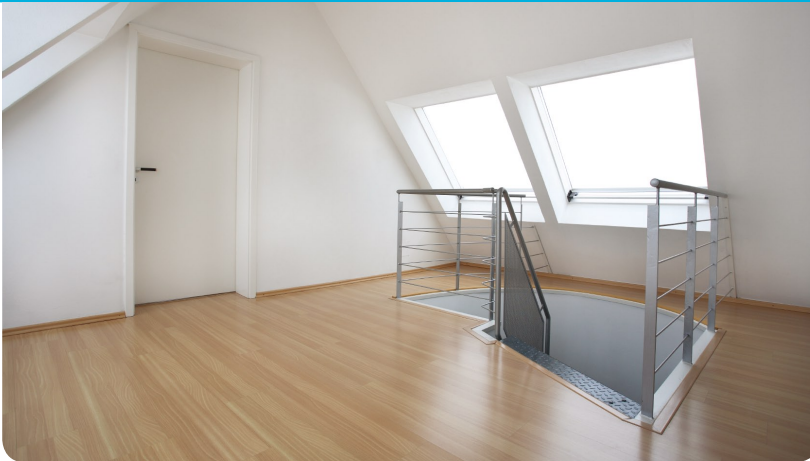
network news

Issue 15 : Early January 2010



A Happy New Year to all Network members and welcome to our latest Network News. In this issue we have provided details of some recent cases of note as well as an update on some recent technical changes and application in practice.

Recent cases of note



A1 Lofts Limited – Ensure Business Arrangements are Reflected by Documentation

This case further highlights the need for businesses to ensure their contractual arrangements are properly in order as any doubt as to the true arrangements in place can lead HMRC to issue assessments which could otherwise be avoidable.

In the case of A1 the business provided project management of loft conversions. The issue concerned whether the business supplied project management services to its clients, with the separate supply by self employed tradesmen (who were mainly non VAT registered) of services to the same clients (as the business argued), or whether A1 acted as the principal using sub contract labour to perform a supply of construction services (as HMRC argued). The consequence being whether A1 was liable to account for VAT on the tradesmen's services or not. The VAT

tribunal found in favour of HMRC, however the High Court sent the case back to the Tribunal as it stated the decision should have been based on the contracts between the parties.

Action point: *Notwithstanding the thankful pragmatic approach by the High Court, it is vital that businesses ensure that business arrangements are clearly reflected in any contracts with their clients, company literature, websites and any other documentation, particularly where there is scope of different interpretation. We will of course be happy to review any such arrangements already in place or which are planned.*

Lunn – Considering VAT Liability of Building Works Prior to Invoicing

This case is a good reminder that clients should closely consider the VAT liability of building works as it involved the VAT

continued overleaf

We are specialists in VAT relating to:-

- » Land & Property
- » Charities
- » International VAT
- » Not for Profit
- » General VAT Queries
- » Import / Export (customs)

Our range of services include:-

- » Planning
- » Assessment Reviews
- » General Business Reviews
- » Investigations
- » Transactional Advice
- » Customs Queries

To see how we can help you call

0870 420 8971

the **vat** people
barnard atkins

treatment of a cottage within the grounds of a listed building. Zero rating is allowed for 'approved alterations' to listed buildings that are or intended to be 'dwellings'. A new dwelling is not created in law if the separate use or disposal of the building is prohibited by planning consent or other provisions or covenants. In Lunn's case the building in question was a new building within the grounds of an existing listed building (Radbrook Manor) but which was prohibited from any use 'other than those incidental or ancillary to the residential use of Radbrook Manor' and could not be used for commercial purposes.

A Tribunal originally allowed zero rating on the basis that separate use meant a distinct use, or use as a separate household such as accommodation for house guests or dependent relatives differing to that of the existing listed building. However, on Appeal by HMRC, the Upper Tribunal found that in fact 'separate use' meant "separate from" and as the planning restriction in Lunn's case meant that the Building cannot be used separately from that of Radbrook Manor the criteria for zero rating was

not satisfied.

Planning Point: It is absolutely vital that the VAT liability of any work relating to listed buildings, or to the construction of new dwellings within the curtilage of an existing dwelling is considered since incorrect zero rating can lead to an unexpected and irrecoverable VAT charge especially if a client's customer is a non VAT registered individual. If you have clients involved in such projects please do not hesitate to contact us for further advice on 0870 420 8971.

The Barn – One Supply or Two

This interesting case looks at the perennial issue of whether there is a single supply with one VAT treatment or separate supplies with their own distinct VAT treatments. The Barn was a building used as a children's nursery which was also hired out at weekends for children's parties. The business charged an inclusive price for the parties and a buffet and argued that its supplies were primarily the licence to occupy the premises (room hire) with the buffet being ancillary to this and thus the whole supply was VAT exempt. HMRC

counter argued that a single supply of a children's party had occurred which is subject to VAT.

The Tribunal chairman found that the provision of use of the hall and the refreshments were in themselves principal supplies but were not closely linked and one element could be enjoyed without the other. As a result **the inclusive price was capable of being separated into the exempt supply of the hall and taxable supply of catering.** Therefore both the business and HMRC had a partial victory in that the room hire remains VAT exempt but the buffets are taxable!

Action point: The moral of this case is that it is always worth checking the correct VAT liability of client's supplies especially when there are a number of component parts and especially where clients apply exemptions to items which if supplied on their own would be VATable. If you require further advice on this issue please do not hesitate to contact us for assistance.

Can we help you?

Remember that our team are at the end of a phone ready to help you with any of your VAT or Customs related queries. As a bunch of seasoned ex-VAT people we are the best source of advice around. Just call our helpline on

0870 420 8971

or email any of our directors personally

Colin Mathieson

colin.mathieson@thevatpeople.co.uk

David Miller

david.miller@thevatpeople.co.uk

Rob McCann

rob.mccann@thevatpeople.co.uk

Ivan Atkins

ivan.atkins@thevatpeople.co.uk

Recent Technical Issues of Note – Changes from 1 January 2010

Given the fact that this is a January newsletter we expect that you are already fully aware of/suffering from over exposure to the changes to both the standard VAT rate, the place of supply of services rules, the introduction of EC Sales Lists for services, plus the changes to the VAT reclaim system for VAT incurred in other EC member states! However, add these changes to the fact that the intrastats threshold for acquisitions had increased to

£600K per annum and it is wholly possible that some of your clients may still not be fully up to speed with changes affecting their VAT affairs. This is especially true for businesses that provide services to customers based in other EC countries to their own.

Action point: it is worth checking that your clients have correctly implemented all the relevant changes.

Contact Us

*If you have any queries arising from the content of this Network News or indeed any VAT related issue you can of course contact us in the usual way – By Phone – **0870 420 8971**, by e-mail – **info@thevatpeople.co.uk** or via your usual VAT People contact here.*

the **vat** people
barnard atkins

t. 0870 420 8971 www.thevatpeople.co.uk