

vat news

Autumn 2009 – Issue 12

Welcome to our Autumn issue



Here at the VAT People we have had a particularly busy summer. We were of course dealing with the usual round of cases, responding to the advice line and dealing with urgent queries – but in addition we moved into our new building. The VAT People has been growing steadily for a number of years and now our new premises will enable us to continue the expansion of our services and our team. The helpline number remains the same and we look forward, as ever, to hearing from you with your queries and concerns on all VAT and Customs related issues.



Recent Technical Issues of Note

Assessments – a new and additional cost to businesses

The change to the VAT and Duties Tribunal system from 1 April 2009 has created a new and additional unexpected cost to taxpayers. It is no longer possible to recover costs in the case of decisions referred to the first Tier Tribunal **even if the taxpayer has been successful in making the appeal and HMRC are found to be at fault**. It is only possible for costs to be claimed if the appeal has been referred to the Upper Tier and only then if the taxpayer has previously opted to pay the costs if they lose the appeal! The fact that the upper tier will only hear appeals that are highly complex means that the majority of cases will be heard by the lower tier. **Action point: This makes it vital that disputes with HMRC are resolved prior to the issue going to Tribunal as a successful appeal to the lower tier will involve professional and other costs that will not be remitted to the client- remember we can review client's tax affairs to avoid disputes, negotiate with HMRC when disputes arise, especially in the 14 day golden period before**

HMRC assess to avoid an assessment arising and the cost of making an appeal.

Transfers of a going concern

We have had recent experiences of HMRC misunderstanding the nature of transactions to the potential detriment of the clients. In one case HMRC sought to compulsorily register a business and demand a back payment of three years VAT. This was on the basis that the client had purchased a VAT registered business as a VAT free transfer of a going concern (TOGC) and was therefore immediately liable to register for VAT. In fact the client had simply entered into a lease of a property that had previously been used for a similar business to the one that the client ran.

In another case HMRC assessed for VAT recovered on the basis that a VAT free TOGC had occurred and therefore no VAT should have been incurred by the business when a client bought a property from one vendor and stock from another. Clearly the client had not purchased a business from either vendor and

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was fully entitled to claim the VAT it had incurred. In both cases we were successful in ensuring that HMRC withdrew high value assessments for VAT. **Action point: Sales and purchases of trade and assets can be complex and it is always worth seeking professional VAT advice. In addition if an assessment is received from HMRC it is always worth seeking a second opinion as we find a number of assessments are issued due to HMRC misunderstanding the nature of the supply that has occurred. Contact us for further assistance for advice on transactions and for advice regarding assessments issued by HMRC.**

Psychologists Services:

The services of a health care professional on a register recognised by HMRC are VAT exempt provided that the services are for the protection, maintenance or restoration of the recipient. Prior to 1 July 2009

psychologists were not on a recognised register and were unable to exempt their services, with effect from 1 July 2009 psychologists are now on a recognised register and can exempt some or all of their services. **There are some important points to consider when psychologists and other Practitioners are providing medical services:**

1. Although some supplies by psychologists are now VAT exempt it is likely that other supplies will remain VATable. This is due to the exemption **only** applying to services **directly for the benefit of the patient.**
2. HMRC's view of what services are provided directly for the benefit of the patient and what are not, is based on a number of factors such as who contracts for the psychologist to provide the service to the patient and the aim of obtaining the service. It is therefore **essential** to check the contract for the service,

understand the aim of the service and who the beneficiary of the supply is in order to determine the correct VAT position.

Advice Tip: Checks should be made to ascertain the reason why no VAT is charged for any clients that treat their supplies as not being subject to VAT. Is the reason that no VAT is charged due to the supply being VAT exempt, outside the scope of VAT or zero rate? For example, clients in the finance sector often assume that any commission received will be VAT exempt whereas there are complex rules to apply to establish if such income attracts VAT or not.

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 officers we are the best source of advice around. Just call our helpline on

0870 420 8971

or email any of our directors personally

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Recent Cases of Note

Scottish Equitable The business has been denied leave to appeal to the ECJ regarding the imposition of the three year cap, the appeal was to be made on the basis that HMRC did not implement the cap correctly and that therefore the cap was invalid. This will effectively put an end to any hope of the cap being overturned. **Advice Tip: This makes it vital to ensure that any claims for VAT over declared by businesses are made as soon as possible after the error has been identified in order to ensure that the claim is not made out of time. If you have identified an over declaration of VAT please contact us for further assistance.**

David Baxendale The Court of Appeal has overturned the Tribunal decision in this interesting case that looks at the perennial issue of mixed supplies with differing VAT liabilities compared to a

compound supply with a single VAT liability. The business supplies diet advice and diet food to its client's at monthly meetings and had successfully argued at Tribunal that consideration for the supply should be split between the standard rated advice provided to its client's and the zero rated food stuff. The Court of Appeal has now ruled that the whole supply is subject to VAT on the basis that the businesses client's are seeking dietary advice. **Points to bear in mind are that it can be both difficult and costly for businesses that make a 'bundle' of different supplies to customers and who do not take VAT advice on the correct treatment of the supply, as the business may be at risk of a VAT assessment and penalties that apply under the new penalty regime – if you have client's making such supplies contact us for further assistance.**

The VAT People Guides – Update

We are very pleased to report that we have additional Guides now available on Land & Property & Partial Exemption, in addition to the 5 guides on other VAT issues made available in our spring edition. **However, these will only be available to Network members so if you've not already joined why not join now? It's free & with no obligation but in addition to receiving our Network News you will receive other exclusive mailings not available elsewhere. E-mail us on info@thevatpeople.co.uk or call us for further details.**

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