

vat news

Mid Autumn 2009 – Issue 13



Welcome to our Mid Autumn edition

This is a new departure for the VAT People as by popular demand we are increasing the number of editions of the Newsletter that we produce per year. So whilst the autumn leaves fall we are continuing to experience a growth in VAT queries, cases and of course our usual helpline queries and we are ready to 'spring' into action! Don't forget that our helpline offers initial free advice and we know from feedback from our clients and contacts that this service is highly valued by them.

Recent Technical Issues of Note

VAT rule for the treatment of 'exported' services will change

One of the most common problem VAT areas for businesses is establishing if their services attract UK VAT if the customer is based outside the UK, or if the work relating to the service is undertaken outside the UK. Many businesses assume that, for example, if the customer is based in another EC country no VAT will be due on an 'exported service', whereas in fact there are complex rules that define the place of supply of services and if there is a liability for the supplier to account for VAT. If the place of supply of the service is the UK the supply attracts UK VAT.

In some cases the place of supply rules means that no UK VAT is due but there is an exposure to register and account for VAT in another EC country on the part of the supplier. Such errors can be costly as in addition to the exposure to account for VAT and penalties, it is common for agreements to be drawn up that do not contemplate the UK supplier charging VAT. This can result in the supplier being unable to pass the VAT charge on to their client.

To add to the difficulties in accounting for VAT on services, the current place of supply rules are changing with effect from 1 January

2010. The current basic rule is that the place of supply is *where the supplier is established* and VAT is due on any supplies made in that country. *This basic rule is varied by a whole host of complex additional rules* that apply to a number of categories of other services.

If the supply falls into a category where the basis rule is varied by additional rules the result may be that either the customer accounts for VAT by making a reverse charge, or the supplier may be liable to register and account for VAT in another EC country than the one where the supplier is based.

The new basic rule is varied by new additional rules applying to certain supplies of services. These new additional place of supply rules differ to the existing rules and in some cases these rules are only in place for a year or two before further changes are introduced. The new rules do not necessarily mean that no VAT is due from the supplier as this may depend on if the customer receives the supply for business purposes and may in some circumstances lead to a liability to register for VAT in another EC country.

Remember: it is absolutely vital that *any* businesses involved in making supplies of

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services in either the UK or outside the UK check that they have systems in place that are ready to correctly account for VAT on supplies made on or after 1 January 2010. *We can offer a VAT review to establish if VAT is being accounted for correctly using the current place of supply rules, advise on the impact of the rule changes and check that the accounting system in place will account for VAT correctly following the place of supply rule changes. Please contact us if you have clients that will be affected by the place of supply rule changes.*

Withdrawal of a useful concession

HMRC have allowed a useful concession for a number of years that allows commercial property developers to reclaim input VAT incurred on construction costs prior to the business registering for VAT and opting to tax the property. As the costs are services, without the concession the business can only go back 6 months pre registration to recover VAT incurred. The concession allows such businesses to go back further to reclaim VAT. This only applies where the property has not yet been used by the developer. The

concession will be withdrawn with effect from 30 April 2010. **Advice Tip:** *If you have any clients who are property developers who have not yet registered to reclaim VAT on development costs the client should be asked to act now to avoid losing VAT recovery. In addition if you have any clients that are considering VAT registration it is worth considering the appropriate date to register from in order to maximise VAT recovery – if you have clients that have incurred high levels of input VAT and are not VAT registered or are struggling to obtain a VAT registration we will be happy to discuss the best way forward with you.*

Recent Cases of Note

John Wilkins (Motor Engineers) Limited and others The new Upper Tribunal has ruled that UK statute does not give the right to compound interest, instead the place for such claims is the High Court. This means that where a tax payer has overpaid VAT due to an error on the part of HMRC they will only be able to gain statutory interest by making a claim to HMRC and compound interest by recourse to a civil law claim via the High Court – *Anyone contemplating making a claim for compound interest will need to make a claim via the High Court, please contact us for further details.*

Smart Voucher Limited The business provides electronic vouchers over the internet for individuals who are unable to set up bank accounts. The dispute related to the nature of the businesses supplies, that is, where they are supplying a service that was VATable in the UK where the business was based

or an electronic service that was classed as being supplied where the recipient received the supply. The Tribunal ruled that the supply was one of electronically supplied services therefore no VAT was due where the supply was received by a recipient outside the UK. Interestingly although this case was heard by the new First Tier Tribunal the appeal was allowed with costs payable to the appellant due to a mechanism allowing appeals lodged pre 1 April 2009 to be treated in the same way as if heard under the old appeal system. **Advice Tip:** *it is worth considering the position for cost recovery in the case of long running disputes with HMRC where an appeal has been lodged pre April 2009. Irrespective of this in the case of supplies of services it is always worth taking professional advice as the current place of supply rules are highly complex and as noted above are due to change from 1 January 2010.*

The VAT People Guides – Update

We are very pleased to report that we have had a good uptake of our additional Guides on Land & Property & Partial Exemption, in addition to the 5 guides on other VAT issues made available in our spring edition. *These are only 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.*

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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Why not Join the Network

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