

vat news

Summer 2009 - Issue 11



The VAT People involved in landmark case

The VAT People are pleased to announce that we were involved in the first ever Hearing in the new Upper Tribunal. The Judge held that this was an historic and landmark case.

The outcome of the case is awaited but it concerned the application of 'compound interest' to overpaid VAT, an issue we have featured in previous newsletters.

Advice Tip: *Whilst the hearing is concerned with some specific issues, there is a wider issue to consider. **This is that if any business has overpaid VAT due to an 'error' by HMRC, then the remedy is payment of compound interest not statutory / simple interest.** Whilst it remains to be seen what the Upper Tribunal rules with regards to how the remedy should be applied, we want to hear from anyone who has clients who have made claims for overpaid VAT to HMRC to see whether the correct remedy has applied. **Bear in mind compound interest can be significant and can be up to 4 times the level of simple interest.***

Recent Cases of Note

The Rank Case: This is a particularly important case as both the Tribunal & High Court have ruled in Rank's favour and in fact paid out circa. £65M overpaid VAT to them already. The case concerns fiscal neutrality in respect of Gaming Machines & also Mechanised Cash Bingo (MCB) or 'interval bingo'. Both Courts ruled that there had been a breach of fiscal neutrality in that similar goods or services had been taxed at different VAT rates – for MCB this was because playing MCB could be either VATable or exempt but at the time when a player inserted cash into the machine, it was not known since the VAT liability of the game was dependent on the number of participants for each game.

There are 2 x **advice tips:**

- *If you are aware of any clients that provide goods or services which have different VAT liabilities but are similar in their nature then we want to hear from you – by way of example, please see MCB bingo above.*
- *Although the Gaming Machine law changed some time ago so claims are not available on*

*them, the VAT liability of participation fees for bingo has only just changed in this year's Budget. Whilst future income is thus exempt, a claim opportunity exists for any Bingo Clubs who have accounted for VAT on participation fees – although HMRC can appeal to the Court of Appeal they have not done so yet – **we want to hear from anyone who has a Bingo Club client who has not yet submitted a claim for participation fees since there is an opportunity to reclaim money.***

Bingo Clubs

The above is particularly relevant given that we know from our current caseload that HMRC are specifically targeting Clubs that charge an 'admission charge' and raising assessments for what they allege is underpaid GPT (Bingo Duty). This seems completely unreasonable and we would strongly advise any Bingo Clubs that charge an 'admission charge' whether on entrance and/or as an all-inclusive fee to review their arrangements and as necessary take advice.

We are specialists in VAT relating to:-

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- Charities
- International VAT
- Not for Profit
- General VAT Queries
- Import / Export (customs)

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To see how we can help you call

0870 420 8971

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Recent Technical Issues of Note

Charities:

We have continued to find recently that many Charities still consider that VAT does not apply to them as they are a Charity. Recent examples include:

- One charity that owned a car park and installed ticket machines and a ticket barrier but wanted the income to be non-VATable as it represented a 'donation' as it is a Charity. We actually have just seen a case where a Charity owned a car park and did legitimately receive 'donations' (which are non-VATable) as the payment of the car park charge was discretionary and there was no enforcement if payment was not made. However, in our client's case the charity did apply enforcement should the charge not be paid so it could not be a 'donation' & VAT was due on the charges irrespective of the status of the car park provider.
- A Charity who was purchasing and then renovating a Listed Building for use as its own office. The Charity is 'in business' and makes supplies, albeit exempt from VAT. In this case our client thought that no VAT would be due on the renovation work as it was a) a Charity & b) the building was a listed building. Unfortunately VAT was due on the work as the charitable status had no bearing in this instance since the use did not fall under the zero rating rules for 'relevant charitable purpose', this being the main relief for Charities where building work is concerned. In addition, zero rating on Listed Buildings is subject to certain conditions and none of these were met. Although we are assisting the client maximise its position, its assumption that everything will be zero rated was unfortunately misguided.

Advice Tip: For any Charity or not-for-profit client it is always worth regular reviews of their activities and how VAT is applied to them. Many organisations remain under the misapprehension that because they are charitable or non-profit making VAT does not apply to them – **this is not the case**, it does and with the advent of the new penalty regime will become more prominent given the strict accountability Charities and their Trustees have. **Remember Good Advice & Planning are Key not just for large projects but for day to day affairs as well. Contact us for further assistance with Charity clients.**

EU (International) Services:

Although these are set to be 'simplified' wef 1st January 2010, (we will feature the changes in detail later in the year once the final details are known), we are increasingly finding that many businesses are not aware of the VAT rules in relation to services provided to other EU countries. By way of recap, the VAT liability is determined purely by where the supply is **deemed to take place**. There is a basic 'default' position that this is where the **supplier** belongs although as with anything to do with VAT there are a vast number of exceptions. **There are 2 x important things to remember though:**

1. Just because a client's customer is not a UK business, **it does not automatically follow that the supply is non-VATable**. This is the most common misconception but the VAT liability is based on where the supply takes place **not** the location of the customer.
2. The 27 EU States **do not** necessarily all follow the same rules! For example, the UK operates certain concessions which may operate in some other EU states

but are not followed in others – **the UK rules should not therefore be taken as being able to be relied on throughout the EU.**

Advice Tip: Again with an eye to the penalty position, our advice is that the place of supply should be established, documented & reviewed regularly for **any** client that provides services to other EU countries. Therefore, it can be correctly established as to why any non-UK sales do not attract VAT. **In addition**, bearing in mind that VAT is due somewhere in the EU, if the sales are genuinely non-VATable we would advise it be established who is required to account for the VAT elsewhere, be it the UK company or EU customer, and appropriate action taken.

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

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The VAT People Guides - Update

We are very pleased to report that we had a fantastic take up on the initial 5 x papers featured in the last VAT News and these are still available. In view of the interest shown we plan to issue additional Guides on common problem areas such as Land & Property & Partial Exemption in forthcoming months. **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.**

For help and advice on any of the material contained in this newsletter please do not hesitate to call us on our free no obligation helpline 0870 4208971, we are always happy to chat through any issue you may have or email us at enquiries@thevatpeople.co.uk

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