AAT VAT Update 14 February 2014

In this Month's edition of the VAT update we look at:

Contents

1. Could belly dancing tuition get VAT exemption?

In taxation, the skill of a practitioner is often being able to interpret the law rather than knowing everything. We all know that in VAT, the law regarding exemption is to be interpreted strictly. With VAT at 20% a mistaken belief that an exemption applies is likely to prove costly.

In **Audrey Cheruvier t/a Fleur Estelle Belly Dance School v Revenue & Customs [2014] UKFTT 7,** the issue was whether tuition in belly dancing could be within the exemption from VAT. Ms Cheruvier provides tuition and instruction in the art of belly dance to students who attend the classes she runs and believes, after taking professional advice, that the teaching is an exempt supply within the scope of **Item 2 of Group 6 of Schedule 9 to the Value Added Tax Act 1994** ("VATA 1994"), being the supply of private tuition, in a subject ordinarily taught in a school or university, by an individual teacher acting independently of an employer. HMRC disagreed and compulsorily registered Ms Cheruvier for VAT purposes with an effective date of 1 June 2009. Following that registration HMRC made an assessment on the Appellant of VAT in the sum of £52,921.

While dance is taught in schools and examined, the belly dance courses are significantly shorter, lack any written element of study, are not taught to any external syllabus or standard, and are not examined. The tribunal ruled that the private tuition given by the Appellant is not in a subject ordinarily taught in a school or university, and accordingly is not within the scope of the exemption conferred by Item 2 of Group 6 of Schedule 9 to VATA 1994. The Appellant is therefore making taxable supplies, and her appeal against HMRC's decision to this effect is dismissed.

The First Tier Tribunal (FTT) conclusion is that "…she is engaged in providing recreation rather than education to those who attend the courses she runs. An activity which is recreational may be studied with as much diligence and care by those who wish to excel in it as an activity which is educational in its nature. Most forms of dance (ballroom dancing, Morris dancing, belly dancing, to identify three at random) are inherently recreational, that is, for the enjoyment and satisfaction of the participants (including their satisfaction through performance) rather than for their intellectual development in terms of expanding or deepening their knowledge. A form of dance may move from the recreational to the educational where it is studied in the context of its history, cultural background and relevance, artistic aspirations and achievements, and critical appraisal, but we had no evidence that the courses provided by the Appellant covered such matters. The courses are practical in nature - teaching individuals how to belly dance. They are not courses in the study of dance in an educational sense".

Ms Cheruvier faces a large VAT bill of £52,921 which she is unlikely to be able to recover from former students. It demonstrates how important it is to take care on these issues and to make sure in any case of doubt that a ruling is obtained from HMRC.

2. Just how big is the VAT tax gap?

HMRC have confirmed the publication of the **second estimate of the VAT gap** will be the same date as the UK Budget 2014 (19 March 2014).

The tax gap is the difference between VAT total theoretical liability (VTTL) and actual yield. Back in December, the VTTL was £113.7bn and the actual yield was £100.7bn. The tax gap was estimated at £12.9bn or 11.4% which is comparatively low in comparison to other jurisdictions. My prediction will be that the VAT tax gap estimate will increase.

3. HMRC announce consultation on Intrastat reporting

A 22 Page consultation has been published seeking the views of businesses required to submit **Intrastat** declarations and users of trade data on proposals to simplify the Intrastat system. This consultation invites comments on EU proposals to reduce the burden on businesses required to submit Intrastat declarations, and seeks evidence on their impact on businesses and the statistical data made available to users. Anyone wishing to comment must do so by 8 April 2014.

The Intrastat survey collects data on trade in goods between the EU member states. It was introduced to provide key information for analysis of the economy, trade and competitiveness when businesses no longer needed to submit customs declarations with the introduction of the single market.

Overseas Trade Statistics data are used as part of the Office for National Statistics' monthly Balance of Payments (BoP) figures. The BoP figures are used to compile the UK's National Accounts i.e. Gross Domestic Product, a measure of the country's wealth and economic well-being. They are also used by the Monetary Policy Committee of the Bank of England, which sets the UK's interest rates.

4. Did meals produced by students of a catering college carry standard rated VAT?

It seems obvious to me that students studying catering and entertainment will generate meals and forms of entertainment as part of their studies. HMRC did not agree and appealed a decision of the FTT in **HMRC v Brockenhurst College [2014] UKUT 46** which had confirmed that catering and entertainment supplied to members of the public were exempt.

HMRC argued that VAT is a tax on the final consumer which in this case was the meals being sold at 80% of cost to the public. As the public was not being educated but were enjoying the catering and entertainment generated by the students as part of their course, HMRC argued that 20% VAT should be added to the cost of the meals consumed.

HMRC's argument ignored the fact that the restaurant meals produced were being sold at less than cost. That is not a business like activity.

The Upper Tribunal delivered a decision of precedent confirming the FTT decision that supplies of catering and entertainment services to members of the public are exempt as supplies closely related to the provision of education – Sixth VAT Directive, Article 13A(1)(m); Principal VAT Directive, Article 132(1)(i) – **VATA 1994, Sch 9, Group 6, Item 4.**

The college made a voluntary disclosure on 5 January 2010, which included a claim for repayment of output tax on the ground that the supplies (of restaurant food and entertainment generated by the students as part of their courses of study) were exempt. The voluntary disclosure related to other matters as well, and related to VAT periods 01/06 to 10/09. The output tax claim related to periods 04/06 to 10/09.

The FTT found that the catering and entertainment services were both integral to and essential to the main supply of education. The FTT held that the students benefited from those supplies, and that they were the true beneficiaries, even though the supplies themselves were made by the College to third parties. On that basis the FTT concluded that the supplies of catering and entertainment services were closely related to the supply of education and/or vocational training, and were thus exempt.

The principal supply being made was one of education and the product generated was ancillary to that supply. A supply of education made by an eligible body is exempt and the Upper tribunal confirmed that the supplies by the college were exempt from VAT.

If you have any clients who are eligible bodies and have been supplying catering or entertainment generated by students as part of their education, a protective claim to recover output tax wrongly paid should be considered.

5. Is your client/employer entitled to a refund from pension management costs?

On 3 February 2014, HMRC published **R&C brief 06/14** which sets out HMRC's position following the decision of the Court of Justice of the European Union (CJEU) in Fiscale Eenheid PPG Holdings BV cs te Hoogezand (PPG). The case concerned an employer's entitlement to deduct VAT paid on services relating to the administration and management of a defined benefit pension scheme.

With so many pension schemes being in deficit and employers having to contribute more to fund the deficit, the issue of recovering the 'cost' of VAT could be important. Those advising clients and/or employers should read this brief carefully and consider making claims for a refund in all in date years if this is appropriate.

The CJEU ruled that, subject to certain conditions, the employer was entitled to deduct the VAT it paid on services relating to the administration of its employees' pensions and management of the assets of the pension fund set up to safeguard those pensions, where the pension fund was a legally and fiscally separate entity.

This HMRC brief is aimed at:

- businesses and other taxable entities that provide pension schemes for their employees
- pension fund management providers
- trustees of occupational pension funds
- tax advisers

As a result of the PPG Holdings decision, HMRC is changing its policy on the recovery of input tax in relation to the management of pension funds. This means that there are circumstances where employers may be able to claim input tax in relation to pension funds where they could not previously.

However HMRC will not accept that the VAT incurred in relation to pension fund management/administration is deductible by an employer in the following circumstances where the:

- supplies were not made to the employer (this includes, but is not limited to, consideration of whether the employer has commissioned and paid for the services)
- supply is limited to investment management services only (that is, it is not a combined supply of both investment management and pension administration services).

Additionally, where the employer receives the supply but the pension fund bears the cost of the services (whether by way of reimbursement or a set off against pension contributions), HMRC will require an equivalent amount of output VAT in respect of the amounts reimbursed to be accounted for. This amount is potentially deductible by the pension fund to the extent that it is engaged in taxable business activities.

Businesses that provide pension schemes for their employees and receive supplies of services that fall within the criteria outlined at notice 700/17 paragraph 1.4 are entitled, but not obliged, to claim a refund of any input VAT which has not previously been claimed. Where a business has chosen to apply the 70/30 split, a claim for a refund would entail a recalculation of the amounts of input tax proper to the employer and the fund respectively.

Public Notice VAT 700/45 - How to correct VAT errors and make adjustments or claims explains how to go about claiming a refund in this circumstance. Claims for under-declared input tax are subject to the

normal capping rules. Claims for repayment will therefore not be considered for periods ending more than four years before the date on which the claim is made.

In next month's podcast, due on 14 March 2014 I'll be looking in more detail at the decision of the FTT in Associated Newspapers Ltd and the VAT implications of promotional schemes following this decision. There will also be updates on other VAT developments.

Derek Allen
11 February 2014

The views expressed in these podcasts are Derek Allen's personal views and do not necessarily represent AAT policy or strategy.

This podcast concentrated on VAT. There will be a general tax podcast updating AAT members on recent developments and decisions available on the website on 28 February 2014.