AAT VAT update 3 February 2014

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1. Budget date 2014 will be 19 March 2014

Draft clauses for Finance Bill 2014 were published on 10 December, together with a Tax Information and Impact Note for each measure. With 814 pages to be read, there is almost nothing new for VAT practitioners arising from the Autumn statement. When giving evidence to the Treasury Select Committee, the Chancellor has announced that the Budget will be on Wednesday 19 March 2014.

2. Could a business providing teaching to a University be VAT exempt for those services?

In **Finance & Business Training (FBT) Ltd v Revenue And Customs [2013] UKUT 594,** the issue was whether FBT could ring fence training courses it ran in association with the University of Wales and treat them as exempt from VAT.

FBT is an institution based in Birmingham which provides certain educational services. Some of those services are provided in relation to courses taught to some of its students in accordance with arrangements which FBT has made with the University of Wales. FBT claimed exemption from VAT conferred by Item 1 of Group 6 in schedule 9 to the **Value Added Tax Act 1994** ("VATA 1994").

In order to be able to rely on that exemption, FBT must establish that it is "an eligible body" in accordance with Note (1) to Group 6. FBT accepts that it is not a college or institution of the University of Wales in relation to the remainder of its activities.

Principal VAT Directive (Council Directive 2006/112/EC), the relevant provisions of which are in Articles 131, 132 and 133 gives exemption from VAT for certain services, in connection with certain forms of education, provided by certain bodies.

In defining “an eligible body” within Group 6 the language does not appear to permit one to hold that a body is an eligible body in relation to some of its activities and not an eligible body in relation to others of its activities. Thus, a body is either a school within Item (1)(a) or it is not. A body is either a university or it is not. It would seem therefore that one will have to determine whether a body is, or is not, a college or institution of a university.

Paragraph 38 concludes that: “FBT is not a college or institution of the University of Wales when one takes account of all of the circumstances, including all of its activities, then it is not within the definition of "an eligible body". It cannot in law be an eligible body and, at the same time, not an eligible body. If it is not an eligible body, it cannot claim exemption under Item 1 even on those occasions when it provides services which would be exempt services if they were provided by an eligible body.”

So FBT must charge VAT on the training courses it runs in conjunction with The University of Wales, Imposing an additional 20% of VAT will have considerable consequence on the cost of the courses to students.

3. Following the Rank decision, HMRC announces intention to recover VAT

HMRC v The Rank group has been won by HMRC in the Court of Appeal in relation to gaming machines, including multi-player terminals, previously found to have not fallen within the legal definition of a gaming machine. This is a decision of precedent and clarifies the law that these machines did fall within the definition of a gaming machine and so their takings at the time were taxable at the standard rate of VAT in the same way as other gaming machines and there was no breach of fiscal neutrality.

All businesses that made a claim and received a repayment from HMRC in accordance with **R&C Brief 11/10** will be asked to repay the amount they received. If you have clients affected by this decision you can read more detail at **Revenue & Customs Brief 01/14**. This Brief sets out the background and publicises HMRC's intention to recover amounts paid out in respect of overpaid VAT on gaming machine takings.

4. Exchange Rates for non EU suppliers of electronic services to account for VAT

The information sheet tells you about some of the most used currency exchange rates for reporting period ending December 2013 needed by non-EU businesses that are registered for the Special Scheme in the UK so they can complete declarations and make payments to HMRC in sterling (GBP). You can find more information in the **VAT Information Sheet 16/13**

5. HMRC announce a new Notice 707 for the VAT Personal export scheme (PES)

The PES allows motor vehicles to be supplied in the United Kingdom free of VAT if they will soon be exported to a destination outside the EU.

This notice cancels and replaces Notice 707 (October 2011). Details of any changes to the previous version can be found in paragraph 1.2 of this notice. This notice is intended for:

- overseas visitors and EU residents who intend to remain outside the EU for at least six months
- businesses who wish to sell vehicles under the Personal Export Scheme

Notice 707: VAT Personal Export Scheme

6. Whether repayment supplement is payable for a VAT credit claimed other than in a VAT return

In **HMRC v Our Communications Limited [2013] UKUT 595,** the dispute was over whether repayment supplement was payable in respect of a VAT credit claimed other than in a VAT return.

Repayment supplement arises under section 79 of the **Value Added Tax Act 1994** and provides that if HMRC delay a repayment excessively (more than 30 days) they are required to pay 5% as a supplement. Our Communications submitted its VAT return for period 01/06 promptly on 3 February 2006 claiming repayment of a certain sum. By a letter dated 3 March 2006, Our Communications claimed repayment of a further £1,488,006.74 in relation to period 01/06.

HMRC attempted to disallow part of the claims for three returns which the company appealed and at a hearing on 19 December 2008 the VAT and Duties Tribunal allowed Our Communications' appeal against that decision. On 4 March 2009 (more than 30 days after the Tribunal's decision) HMRC paid Our Communications the input tax which it had been denied.

HMRC subsequently paid Our Communications repayment supplement in respect of the sums claimed in its returns, but refused to pay repayment supplement in respect of the £1,488,006.74 claimed in the letter of 3 March 2006.

Now if I pause at this point and ask: ”What would be fair?” HMRC has had £1,488,006.74 since January 2006 and there is a process which stops repayment supplement if there is a dispute. But when the First Tier Tribunal gave its decision, HMRC should have made the repayment promptly. It failed to so do.

Repayment supplement has been described as a “spur to efficiency” of HMRC: see *Customs and Excise Commissioners v L. Rowland & Co (Retail) Ltd* [1992] STC 647 at 655 (Auld J). Repayment supplement was intended to be HMRC’s equivalent to the taxpayer surcharge.

Counsel for Our Communications accepted that, on different facts to the present case, it was possible to envisage anomalies in the operation of section 79, but submitted that that did not compel the conclusion that the section should be construed as HMRC contended. HMRC argue that, as a matter of necessary implication, section 79 only applies where the amount in question is shown as due on the requisite return or claim, which in the case of a claim for payment is the return for the prescribed accounting period concerned.

The fact that HMRC succeeded in such a specious argument shows just how much fiscal law interpretation has changed. Interpretation of the law used to follow the strict literal rule. To paraphrase Rowlatt, in taxation there is no room for any intendment. You look at what is said and at what is said clearly. You imply nothing.

Now we have the Upper Tier Tribunal interpreting law assuming that something is implicit. But that is their judgment and the company lost. It is not getting repayment supplement on the £1,488,006.74. That is unfair but it is the new interpretation of the law.

Derek Allen
3 February 2014