VAT update 14 July 2015

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

1. Budget number two for 2015
2. repayment claims and compound interest after Littlewoods decision
3. notification that a partnership has ceased can be by letter
4. Supreme court decision on Rank appeal for gaming machines to be exempt

1. Budget number two for 2015

After delivering his first conservative Budget on 8 July, the Finance Bill will be published on 15 July 2015 and it will have its second reading on Monday 20 July. After this, the Commons rises for the summer recess on 21 July and returns on 7 September. The Committee stage of the Bill and the other remaining stages will take place in September after the House returns.

I hesitate to comment in advance of the Finance Bill because the devil is in the detail but I did not spot any changes to the VAT regime. Indeed the only change I spotted for indirect tax was that from 1 November 2015 the standard rate of Insurance Premium Tax (IPT) will be increased to 9.5% and there are some transitional provisions for those insurers which are in special schemes.

2. Repayment claims and compound interest after Littlewoods decision

No one was surprised when HMRC announced their intention to appeal the Court of Appeal's decision in favour of Littlewoods. It will be several months before a decision is announced as to whether the Supreme Court will hear HMRC's appeal. There is a lot at stake.

HMRC are seeking leave to appeal to the Supreme Court against the Court of Appeal's ruling that the payment of simple interest to the taxpayers did not provide them with adequate recompense for the overpayments of VAT that they made, and that they were entitled to compound interest. In the meantime, HMRC have published a briefing note **R&CBrief 9 (2015)**

HMRC maintain that the Court of Appeal's decision does not mean that they should pay compound interest to other taxpayers and the brief states that HMRC will continue to delay matters until the Littlewoods case is concluded. Protective claims should be made pending the final outcome.

3. Notification that a partnership has ceased can be by letter

Partnerships often start well but many finish badly. In many cases partnership joint and several liability can produce some very unfair results on one of the partners. It is important that when a partnership ceases, everyone relevant is informed as quickly as possible.

VATA 1994 s.45 provides that until the date on which a change in the partnership is notified to the Commissioners, a person who has ceased to be a member of a partnership shall be regarded as continuing to be a partner for the purposes of VAT. Mr Lye wrote to HMRC on 3 May 2008 informing HMRC that the partnership had ceased and he was able to produce a copy as evidence. HMRC denied receiving the letter and as a result claimed that the partnership continued until 18 August 2010 when an agreement was reached between the partners which agreed that the partnership had ceased on 1 May 2008.

HMRC contended VAT assessments were due for periods until 18 August 2010. If HMRC contentions had been accepted, the partnership VAT assessments for periods to August 2010 would have stood and Mr Lye and the other partner would have remained jointly and severally liable for those assessments.

Fortunately, Mr Lye was able to produce evidence which was accepted by the tribunal. His letter was evidence that notice had been given to HMRC. Section 98 VATA permits any notice required to be given under the Act to be given by post. Section 7 Interpretation Act provides that where an Act authorises a notice to be sent by post service is deemed to be effected at the time the letter would

have arrived in the ordinary course of the post by properly addressing pre-paying and posting such notice unless the contrary is proved. This meant that the VAT due on supplies made by Mr Ashman after notification had been given were the sole responsibility of Mr Ashman who would need to pay the VAT.

http://www.bailii.org/uk/cases/UKFTT/TC/2015/TC04407.html

4. **Rank Loses appeal for gaming machines to be exempt at Supreme Court**

Revenue and Customs v The Rank Group Plc [2015 UKSC 48] concerned whether VAT was due on gaming machine takings or whether during the period 1 October 2002 to 5 December 2005, the takings on a particular category of machines (the disputed machines) operated by the appellants (Rank) were subject to VAT.

The disputed machines were all slot machines used for gaming. Traditionally such machines are coin-operated, with three or more mechanical or video reels which spin when a button is pressed or, in the case of older machines, when a handle is pulled. The machine typically pays out according to the patterns or symbols on the machine when it stops. The basic form of the machines is sufficiently described in the agreed statement of facts, based on the findings of the VAT and Duties Tribunal:

> … the hardware of a slot machine consists of a cabinet containing the electronic control board, power supply coin insert and pay-out mechanisms, reels and/or video screens and cashboxes. The electronic control board is an embedded microprocessor control system that generates the winning and losing games and displays the results to the player via the reels, lamp displays or video screens. The machine's software is a list of instructions that the processor executes in order to generate the winning or losing games. Such software is controlled either by embedded software that is controlled or random or by a remote 'random number generator'. 'RNG' (for 'random number generator') is used to describe the system for producing numbers for the machine's software, whether the system is embedded in that software or provided by means of another device.

As is apparent from that description, and was explained in evidence, modern machines are entirely computerised:

> In modern slot machines, the reels and lever are present for historical and entertainment reasons only. The positions the reels will come to rest on are chosen by an embedded RNG contained within the machine's software.
> The RNG is constantly generating random numbers, at a rate of hundreds or maybe thousands per second. As soon as the lever is pulled or the 'Play' button is pressed, the most recent random number is used to determine the result. This means that the result varies depending on exactly when the game is played. A fraction of a second earlier or later, and the result would be different (quoted by Rimer LJ, para 26 in the Court of Appeal)

Such gaming machines were excluded from VAT exemption in note 3 to item 1 of VATA 1994 Sch9 group 4 as at the relevant time. In other words VAT was due.

It is quite rare for TAX disputes to come before the Supreme Court so the decision is worth a read **here.**

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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 31 July 2015.