

Finance Act 2012 VAT changes – where are we now?

There is no doubt that the 2012 Budget was one of the most mismanaged that I can remember. George Osborne, who has a reputation for political adroitness, all but fell over his own feet with the now infamous Granny Tax and Pasty Tax.

So where are we now with the VAT changes? I covered these a bit in my [September 2012 podcast on topical tax matters](#), but now I'd like to turn to them in a bit more detail in written form.

It's all about anomalies! The Chancellor is fed up that there are VAT anomalies and he wants to get rid of them. But rather than deal with something major like books vs. ebooks or crisps vs. maize and rice based products, he picked six odd areas to have a go at:

- Hot food and premises;
- Sports drinks;
- Self storage;
- Chair rentals;
- Caravans;
- Work on protected buildings.

I'll start with hot food and premises. Note that there are two beasts in here: hot food (aka the pasty tax) and a subsidiary issue of "premises".

I'll take them separately and then put them together! The hot food issue arises because of the anomaly between traditional hot food takeaways such as fish and chips and Asian takeaways (standard rated) on one hand and food that is hot at the point of sale, but may not be consumed hot, such as Greggs pasties and rotisserie chicken from say Tesco. There has been scope for these to be zero rated.

By the way, for VAT purposes, food also means drink.

Under the original budget proposals all food sold above ambient temperature would have had VAT imposed on it. So all the Greggs pasties and Tesco rotisserie chicken would have become standard rated.

A quick point about bread. Both supermarkets and local bakers bake on premises and the bread is often hot at the point of sale and is cooling down. In the original proposals bread sold hot or cold would have remained zero-rated and that has not changed. It would be political suicide for the coalition government to put VAT on bread.

So what did the government do after the pasty outcry? Yet another U-turn. It went away and changed the rules and what we have from 1 October 2012 is a new set of tests to determine the VAT status of the products.

If you want the fine detail, HMRC produced a set of [VAT Information sheets](#) in August 2012 and the sheet for hot food and premises is [VAT Information Sheet 12/12](#).

Under the new rules, the sale of food is standard-rated if the food (or any part of it) is hot at the time that it is provided to the customer **and one or more** of the following 5 tests is satisfied:

Test 1: It has been heated for the purposes of enabling it to be consumed hot (ie the old pre-October 2012 test);

Test 2: It has been heated to order – say in a microwave;

Test 3: It has been kept hot after being heated – say in a heated serve-over;

Test 4: It is provided to a customer in packaging that retains heat, or in any other packaging that is specifically designed for hot food;

Test 5: It is advertised or marketed in a way that indicates that it is supplied hot.

Most of this is fairly straightforward, but we'll have to see how it beds down.

The point about "premises" is that there has always been the option to take cold takeaway food off the premises and that would be zero-rated (remember hot takeaway food has always been standard rated). That is why when you go into Pret a Manger for a sandwich, they ask: "eat in or takeaway?"

If you eat in that is catering and is standard rated. If you take the sandwich away for eating off the premises, say in your office, then that can be zero rated.

The reason that the Chancellor is making the change for October 2012, is that in many towns we now have shopping centres with food courts and common seating for customers to consume their food.

The new rules make sure that the word premises includes this communal seating, so that if you want your BLT to be zero rated (and let's face it, they taste better without VAT), then you have to get right away from the seating!

Let's now turn to the second of these anomalies that the Chancellor thought needed correcting: sports drinks.

This is quite straightforward. In the VAT legislation "beverages" are standard rated. This group includes syrups, concentrates, essences, powders, crystals or other similar products which in theory ought to include sports drinks designed to build bulk and marketed at gym users.

The problem is that some manufacturers have put so many goodies into these offerings that they have jumped box and fallen back into the zero rated basic foodstuffs box. Some taxpayers have challenged HMRC on the point and won and so HMRC is keen to change the law so that it suits them.

So all of the sports drinks are standard rated from 1 October 2012 whether they are drunk for bulking or rehydration.

This ought not have any effect on products designed to be used as part of a controlled weight loss programme and marketed at slimmers and these will remain zero-rated, (although, low sugar and calorie type drinks will remain standard-rated as beverages).

If you need more information on this topic, then look at [VAT Information Sheet 15/12](#) – August 2012 and available on HMRC's website.

The third of the anomalies is self storage. The Chancellor is keen to ensure that the self storage sector of the economy will have to now charge VAT on self storage in addition to the other statutory standard ratings in Group 1 of Schedule 9, VATA 1994.

Let's remind ourselves how the law works. The basic rule is that a supply of an interest in land is exempt for VAT purposes. Think lease or a licence.

However, the law also says that this exemption can be overridden in two circumstances: first, where statute demands and secondly, where the person making the supply overrides the exemption by choice and opts to tax the supply (there is only one reason to do this and that is to get input tax back).

Self storage businesses have many unregistered customers – so this means private individuals, who can't reclaim any VAT charged to them. So it's in the interest of the self storage businesses not to charge VAT and to take advantage of the exemption.

But from 1st October 2012, all this changes. Because the Chancellor wants all storage to be standard rated, he's come up with what in my view is a bogus argument. He says that traditional removal companies charge VAT when they provide storage facilities, so let's get those self storage companies to do the same.

There are a few exemptions such as supplies of storage to charities for non-business purposes (such as storing blankets for disaster relief), but generally, this hole in the legislation is now gone and it will have a

knock on effect on the consumers who use self storage facilities and who will now be charged VAT from 1 October.

If you need more information, then have a look at [VAT Information Sheet 14/12](#).

OK, we are getting there. Let's now turn to chair rental.

This again smacks of spite on the part of the Chancellor. According to the government, too many salon owners are still exempting chair rental to their self employed stylists from the charge to VAT. Well, that's fair enough if the space rented is self-contained. The salon owner would have been well within his rights to exempt the supply. But many salons are open plan and everyone wanders around in this open space, customers and stylists alike. So what the salon owner is actually doing is renting the use of facilities and this has to be standard rated for VAT.

So the Chancellor wants all salon owners to charge VAT. He wants those owners still exempting their supply to charge VAT from 1 October to remove the anomaly.

This may mean that some salon owners will now be required to register for VAT for the first time.

The next area that fell under the Chancellor's gaze was caravans and that too has experienced a major U turn.

The basic shape of the pre-Budget world was that tourers were standard rated and static residential vans were zero-rated. The problem was the caravans in between – that is, the holiday vans which were made to a lower environmental standard and were less well insulated.

In the original proposals, all caravans would have been standard rated, but the holiday van sector would have been badly affected and this would have had a big effect on East Yorkshire where 90% of these vans are made!

After a huge outcry, the Chancellor relented and so, from 6 April 2013, there will be three categories:

- Tourers – these will stay at 20%;
- Holiday vans with lower levels of insulation – these will be at the new rate of 5%;
- Static residential vans with high levels of insulation – these will remain at 0%.

The last area is in respect of "protected buildings".

This is not a helpful or happy VAT phrase. In straightforward terms it means listed dwellings. It also includes scheduled monuments and places of worship, but I won't be dealing with those here. I just want to deal with the listed dwellings.

Effectively there are two groups of players here:

- Developers who buy listed dwellings in a poor state of repair, renovate them and then sell them;
- Builders who do work for customers on listed dwellings.

The changes, from 1 October 2012 mean that a developer will now only be able to zero rate his final sale of the house if the building being developed had no more than the walls (and historical features) of the original building in the new building. The old 3/5 cost test has gone.

The other change is for the builder. Also from 1 October he will not be able to zero-rate approved work on listed dwellings and that too will have to be standard rated.

I have to say that this does make this area simpler to understand and to advise on. There's always been the problem of approved works being zero-rated and repairs being standard rated and this has led to a myriad of VAT cases before the tribunal and higher courts.

All now consigned to history!

Michael Steed