

## AAT VAT Update 14 August 2014

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

- 1 Filing VAT returns not limited to online filing
- 2 Partial Exemption method using floor space upheld
- 3 Late applications for costs may be awarded at the tribunals discretion
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### 1. Filing VAT returns not limited to online filing

Since April 2012, HMRC has tried to impose mandatory online filing of VAT returns. When the L G Bishop Electrical Co. v HMRC [2013] UKFTT 522 decision ruled UK VAT law failed to take into account a person's ability to comply on account of age, disability, computer illiteracy and remoteness of location, HMRC had to change its stance. It introduced telephone filing and if you can show that online filing and telephone filing are not reasonably practical it will now be possible to file using a paper return.

HMRC have published [Brief 29/14](#) which sets out the changes.

The changes to Regulation 25A of VAT Regulations 1995 came into effect from 1 July 2014 but were only announced at the end of July and include:

- Enabling HMRC to approve telephone filing as an alternative method of electronic filing for use by businesses that satisfy HMRC that it is not reasonably practicable for them to use the current method of online filing
- Providing an additional exemption from electronic filing for businesses that satisfy HMRC that it is not reasonably practicable for them to use an online channel with the result that such businesses will be able to file on paper.

### 2. Partial Exemption method using floor space upheld

In the absence of a specific agreement with HMRC the default mechanism for calculating the partial exemption recovery fraction is based on turnover. In something like a storage business, this has the potential to produce absurd results if the majority of a building is used for standard rated storage but include insurance sales, which are exempt.

LokNStore Group plc's business was a storage service business (they provided facilities for self storage) in the course of which they also sold insurance. Their proposal for a special partial exemption method was to allocate input VAT according to floor space, resulting in a 99.8% deduction of input tax, compared to the recovery rate of between 94% and 96% using the standard method. This was upheld by the First Tier tribunal (FTT) but HMRC appealed to the Upper Tribunal (UT).

At 35 pages the [judgement](#) is worth a read.

The function of a partial exemption special method (PESM), as of the standard method itself, is to produce a fair and reasonable apportionment of input tax which reflects the use made by the taxable person of the relevant goods or services in making taxable supplies. In the case of residual input tax, where direct attribution to supplies which are either exclusively taxable or exclusively exempt is impossible, the search is always for an apportionment which captures, as fairly and reasonably as possible, the actual use of the relevant goods or services in making taxable supplies.

HMRC has lost again. Mr Justice Henderson ruled that the FTT was correct to conclude that the floor space method provided a fairer apportionment of the residual input tax which could be claimed by the company. He judged that the FTT had mistakenly interpreted the SKF decision but that mistake had no material effect on the decision of fact which the FTT were entitled to conclude.

### 3. Late applications for costs may be awarded at the tribunals discretion

In *Leeds City Council v Revenue & Customs* [2014] UKUT 350, HMRC had won the appeal but were then 4 days late in submitting a claim for legal costs of £18,000 to be awarded to them. The Court rules have been tightened such that time limits are to be respected and delays may result in forfeiture of claims.

Mr Colin Bishopp was the tribunal judge faced with interpreting the rules but he followed an over-riding principle that the new rules are to be construed in the interests of justice. Although HMRC had a feeble excuse for the failure to lodge their claim for legal costs on time, the failure by 4 working days was minimal and it would be unjust if Leeds Council which lost its appeal could escape the consequences of their decision to appeal on a technicality.

He ruled at Paragraph 25 that ... "There will be no real injustice to Leeds if it is required to pay those costs, while there will be injustice to HMRC, representing the body of taxpayers, if it is deprived of a costs direction because of a minor error. I am satisfied that it is appropriate to extend HMRC's time and to admit the application, and I so direct. I should add that I regard the omission of a costs schedule as a negligible failing which does not affect that outcome." And went on to warn at Paragraph 27 that ... "Time limits are there to be complied with, and for the reason I have given; but mistakes do occur and if they are not egregious—for example when there is a failure to comply without good reason with an "unless" direction—or are not remedied promptly when discovered, they should not, in my view, lead to satellite litigation which takes up the resources of the parties and the tribunal."

<http://www.bailii.org/uk/cases/UKUT/TCC/2014/350.html>

### 4. Updated Notice 700/2 for group and divisional registration

The **notice** replaces the September 2011 publication and it has been updated to reflect changes to the way businesses apply for VAT registration. It also now includes guidance on how to value supplies on which the intra-group reverse charge is due. This reflects Para 8A of Schedule 6, VAT Act 1994 which was introduced in 2012 to give legislative effect to the valuation previously allowed by an extra-statutory concession. There have been no other significant changes to the legislation since the amendments made to the eligibility conditions for joining a VAT group in August 2004.

### 5. Agent Update 43 published on 4 August

#### Agent Update 43 (PDF 666K)

The bi-monthly 15 page round up of the latest developments in tax has 4 articles on VAT related topics including:

- Penalties for mistakes and delays with your VAT
- Changes to the VAT place of supply of service rules for broadcasting, telecommunication and e-services
- VAT: bringing multiple vehicles into the UK from abroad

It also gives details of HMRC service and consultations for accountants and tax professionals and a section on the latest news and issues from the Working Together network.

### 6. HMRC issue updated guidance on diagnostic services in state regulated laboratories

#### Revised Notice 701/57

This notice updates and replaces the November 2012 edition. It clarifies the VAT liability of services provided by health professionals and unregistered staff working in state-regulated laboratories and the scope of the exemption for diagnosis services.

This notice explains:

- the VAT liability of goods and services provided by registered health, medical and paramedical professionals, including the VAT liability of drugs, medicines and other goods available on prescription, as well as contraceptives and smoking cessation products
- the circumstances in which VAT registered health professionals may recover the VAT they have incurred on purchases and overheads
- specific rules that apply to supplies made by dentists, overseas medical practitioners and deputising doctors
- the circumstances in which care services provided by non-health registered suppliers are VAT exempt, and
- the VAT liability of supplies of health professional staff.

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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.

The next VAT Update will be on the website on 14 September 2014