

AAT VAT update 14 June 2014

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1. Finance Bill consideration and Queen's Speech on 4 June

The State Opening of Parliament for the 2014-15 session took place on Wednesday 4 June 2014, followed by the Queen's Speech which was the final speech of this Parliament before the election in May 2015.

Consideration of the Finance Bill 2014 resumed on 10 June.

2. BB23/14: introduction of a domestic reverse charge for businesses wholesale trading in gas and electricity

This brief announces the implementation date (1 July 2014) and publishes the associated draft legislation and guidance on how the domestic reverse charge for wholesale trading in gas and electricity will operate.

A domestic reverse charge means the customer receiving wholesale supplies of gas or electricity must account for the VAT due on these supplies on their VAT return rather than the supplier. The customer can deduct the VAT due on the supplies as input tax, meaning no net tax is payable to HM Revenue & Customs (HMRC), subject to the normal rules for reclaiming VAT. This removes the scope for fraudsters, for example MTIC or carousel fraudsters, to steal the VAT due to HMRC and follows similar measures introduced in response to criminal threats for mobile telephones, computer chips and emissions allowances.

Businesses registered or liable to be registered for VAT that buy or sell wholesale gas and electricity in the UK need to read this brief at: <http://www.hmrc.gov.uk/briefs/vat/brief2314.htm>

3. Certain kinds of dog food can get zero rating

In *Revenue And Customs v Roger Skinner Ltd* [2014] UKUT 204, the issue was whether certain kinds of dog food were pet food. The company succeeded in its argument at the First Tier Tribunal (FTT) that it was entitled to a repayment of VAT which it had overpaid in error.

Skinner has been selling dog food since 1980. Initially, it sold products known as "Skinner's Dog Food" ("Dog Food") and "Skinner's Dog Meal" ("Dog Meal"). The two were of similar composition, but the latter, unlike the former, was not made into pellets and, as a result, looked somewhat like muesli. Like the other dog foods at issue, both were complete foods: there was no need to give a dog any other food.

In 1987, Skinner introduced "Skinner's Protein 23" an extruded food. "Skinner's Ruff & Ready" ("Ruff & Ready") followed in 1990 and is still on sale today. This is a moist muesli for dogs.

The products were formulated with working dogs in mind. While, however, they were suited to gun dogs and other working dogs, they were also suitable for pet dogs. The First Tier Tribunal ("FTT") found (at paragraph 50 of the Decision) that the food was "a good quality food which could be fed safely to any dog but was particularly suitable for active dogs, whether pets or working dogs".

Early on, the two products Skinner was then selling (viz. Dog Food and Dog Meal) were packed in 20kg bags (the “size of an agricultural feed sack”) bearing a sketch of a golden retriever. Skinner also advertised in working dog magazines. It did not place advertisements in magazines concerned with show dogs or in general pet dog magazines. Sales representatives were told to hold the food out as suitable for all dogs, but also primarily to stress the products’ suitability for gun dogs.

Skinner introduced its “Field & Trial” range in 1998 in response to competition and also to “HMRC’s acceptance that specifically labelled and formulated working dog food could be zero rated”.

Schedule 8, VATA 1994 defines those items which can be zero rated but pet food must be standard rated. In 1994, HMRC accepted that food specifically for greyhounds was zero-rated, but they continued to take the view that dog food was otherwise subject to standard-rate VAT. It was not until 2002 that HMRC recognised that food for dogs other than greyhounds could be zero-rated.

In Notice 701/15/02 *Animals and animal food*, HMRC stated:

“If a specially formulated food is held out for sale exclusively for working dogs it will come within the scope of the VAT relief – unless it is biscuit or meal.”

The FTT found as a fact that: “ (Skinners) .. represented the food to be gundog food and working dog food... .” and that “occasional sales of the food as pet food are irrelevant where the overall holding out was, as we find it was, (bar the exception discussed below in paragraph 192-193) that the food was gundog food.”

Mr Justice Newey delivered his decision on 15 May upholding the FTT decision that food designed for working dogs was entitled to be zero rated. Skinners are entitled to a refund of approximately £7 million of VAT it paid. If you have clients potentially affected by this decision which is one of precedent establishing the correct interpretation, my advice is to lodge a protective claim and read the decision carefully.

<http://www.bailii.org/uk/cases/UKUT/TCC/2014/204.html>

4. Polycarbonate panels for conservatory roofs cannot get reduced rate

In *Revenue And Customs v Pinevale Ltd* [2014] UKUT 202, the Upper Tribunal overturned the decision of the FTT in favour of denying the reduced rate of VAT for polycarbonate roof used to improve the thermal insulation of conservatories. However, the company had gone into liquidation and was not represented at the hearing.

Section 29A VATA 1994 provides that VAT on any supply that is of a description for the time being specified in schedule 7A shall be charged at the rate of 5%.

According to Pinevale the panels were “insulation for roofs” because, as the evidence demonstrated, they provided insulation by forming a barrier to reduce or stop heat loss or, in summer, heat gain. This resulted in energy saving, whether on heating or air conditioning. However, HMRC argued that the panels are not “insulation for roofs” but are the roof itself. So, if an entire existing roof is replaced, the panels constitute the new roof, not just insulation for a roof. Likewise, the replacement of individual panels with Pinevale’s panels was the supply of new roof panels, not the supply of insulation for a roof.

Mr. Justice Richards believed the FTT had misinterpreted the law and he preferred the HMRC interpretation which distinguished between insulation attached to a roof and the roof itself. The panels were the roof itself and so fell to be standard rated.

<http://www.bailii.org/uk/cases/UKUT/TCC/2014/202.html>

5. Drug dispensing by Physiotherapists and Podiatrists may be zero rated

[Revenue & Customs Brief 21/14](#) announces a consequential change to UK VAT law to permit the zero-rating of the dispensing of drugs prescribed by physiotherapists and podiatrists following changes introduced in The Human Medicines (Amendment) Regulations 2013.

Item 1 of Group 12 of Schedule 8 to the Value Added Tax Act 1994. Note 2B to Group 12 lists the health professionals who are permitted to prescribe drugs. Physiotherapists and podiatrists have been added with effect from 21 May 2014. A newsletter to any clients affected is recommended.

6. HMRC helps agents with reminders for clients' VAT return due dates

[VAT Return reminders for Agents](#)

Sign up to receive an email to remind you when your client's VAT Return is due.

7. Budget 2014 VAT change summary

[VAT Notes 1 2014 Budget Supplement](#) (2 pages) gives details of the changes to VAT announced in the Chancellor's Budget on 19 March 2014.

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14 June 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 30 June 2014.