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AAT VAT Update 14 February 2015

In this month's edition of the VAT update we look at:
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1. Zero rating available for a static caravan's decking

Composite supplies is a difficult area in VAT. With the standard rate at 20%, there is a considerable commercial advantage in being able to zero rate a supply or even an element of a supply. Contentious cases appear regularly before the tribunals.

In Colaingrove Ltd v HMRC [2015] UKUT 0002, the point at issue was whether zero rating applies to a veranda when it is sold with a new caravan. Zero rating is available on the sale of a new static caravan by virtue of Group 9 of Schedule 8 to the Value Added Tax Act 1994 ("VATA"). If the veranda was added after the sale and transfer, it would be standard rated for VAT.

Colaingrove Limited ("Colaingrove") operates holiday parks and resorts in the UK. As part of its business it sells what are described as "static caravans" or "residential caravans". They are holiday homes providing living accommodation.

The parties are agreed that, if the Card Protection Plan 30 Ltd v Customs and Excise Commissioners (Case C-349/96) [1999] STC 270 ("CPP"), principles apply, the sale of a caravan with a veranda would be a single supply. The principal supply would be the zero rated caravan and the veranda would be an ancillary supply. The CPP principles are aimed at determining from the essential features of a transaction whether what is being supplied to the typical consumer is several distinct supplies (of services or goods) or a single supply from an economic point of view which should not be artificially split.

The FTT concluded that although the veranda served the caravan and promoted its enjoyment, it was not "subordinate to" the caravan. Further, the veranda was attached to the caravan, but it was not integral to it. The FTT ruled the supply of the veranda should be standard rated and so the company appealed to the UT.

The company argued that the FTT had erred in law in applying the CPP principles and had erred by failing to apply the definition of caravan in the Caravan Sites and Development Act 1960. Had the FTT applied this definition, it would have found that the veranda was part of the caravan and therefore within the scope of what Parliament intended to zero rate.

A decision of the UT is a precedent and the UT reversed the FTT decision:
"In our judgment, there is nothing in Group 9 of Schedule 8 to exclude a veranda from the scope of zero-rating by reason of being part of a single supply of which the principal supply is a caravan. We can discern no legislative intention to do so. There are no express words of exclusion, nor is there any particular or specific language confining the zero rating to only that element of a single supply that comprises simply the distinct element of the caravan itself, without the veranda……application of the CPP principles, in relation to a single supply of which the caravan is the principal element and the veranda is the ancillary element, has the effect that zero-rating applies to the whole of the single supply, including the veranda."

Finance Act 2012 changed the law regarding static caravans which are holiday homes and imposed a 5% reduced rate of VAT.

http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Colaingrove-ltd-v-HMRC.pdf

2. Credit card booking fee is still exempt if structured properly

In Revenue & Customs v National Exhibition Centre Ltd [2015] UKUT 23, the NEC wanted a repayment of the VAT that NEC considered had been overpaid on the booking fees it charged to customers in cases where the customers purchased tickets for concerts by means of debit or credit cards. NEC had paid VAT on the assumption that the transactions involved a standard rated supply but by its claim NEC contends that the card booking fee constituted an exempt supply. NEC won at FTT but HMRC appealed the decision to the Upper Tribunal (UT).

The UT has dismissed HMRC's appeal against the First-tier Tribunal's decision and HMRC continued to argue that the booking fee was part of a composite supply of a wider bundle of services that should be standard rated. The UT decided that 'booking fees' charged by the National Exhibition Centre Limited (the NEC) were payments for handling debit and credit card payments.

However, like the First-tier Tribunal which heard the similar 'payment processing' case of Bookit Ltd*,* the Upper Tribunal concluded that it needed guidance from the CJEU on the scope of the EU law exemption and its application to the charges made by the NEC.

For the moment the card booking fee is exempt from VAT pursuant to the exemption in respect of financial services in Article 13B(d)(3) of the Council Directive 77/388/EEC of 17 May 1977 ("the Sixth Directive") (now Article 135(1)(d) of the Principal VAT Directive; Council Directive (EC) 2006/112/EC of 28 November 2006). The issue which has been decided is that the card booking service is a separate supply. We'll have to await guidance from the CJEU to be certain that such a supply is within the exemption.

http://www.bailii.org/uk/cases/UKUT/TCC/2015/23.html

3. Non-profit making members' sports clubs repayment claim guidance

If you are involved with a golf club or similar type of members' sporting club then BB01/15 is a must read because it gives guidance on claiming refunds now that Bridport has become final. Following the decision of the Court of Justice for the European Union (CJEU) in Bridport and West Dorset Golf Club, HM Revenue and Customs (HMRC) accepts that supplies of sporting services made to both members and non-members by non-profit making members' sports clubs can be treated as exempt from VAT.

In practice, an extensive review of claims submitted to HMRC so far has led to various issues being identified which this information sheet serves to highlight and offer helpful guidance. This information sheet should be read by any non-profit making members' golf or sports club (and/or the clubs advisers) which has already made a claim for overpaid VAT to HMRC; or any such club which is now considering making a claim. It should be read in conjunction with Revenue and Customs Brief 25/14. Claimants need to pay attention to the guidance on time limits especially if a Fleming type claim for earlier years is involved.

https://www.gov.uk/government/publications/vat-information-sheet-0115-claims-by-non-profit-making-members-sports-clubs-for-overpaid-vat-on-supplies-of-sporting-services-made-to-non-members/vat-information-sheet-0115-claims-by-non-profit-making-members-sports-clubs-for-overpaid-vat-on-supplies-of-sporting-services-made-to-non-members

4. HMRC publish guidance on VAT grouping rules after Skandia

Skandia America Corporation was a company incorporated in the United States, with a fixed establishment (a branch) in Sweden. The Swedish branch became part of a Swedish VAT group. The Swedish tax authority viewed services provided by Skandia America Corporation to its Swedish branch as taxable transactions. Skandia disagreed on the grounds that these were intra-company transactions and consequently not supplies for VAT purposes, following the decision in FCE Bank (C-210/04). The matter was referred to the CJEU

The CJEU stated that under the Swedish grouping provisions only the branch that was physically located in Sweden could belong to a Swedish VAT group. The CJEU ruled that consequently the branch in Sweden became part of single taxable person (the group) different to the taxable person of the US head office. The provision of IT services by the head office to its branch was a supply between 2 separate taxable persons and so liable to VAT. The Swedish VAT group had to account for VAT on those services under the reverse charge.

Under the UK's VAT grouping provisions, a body corporate such as a company must have an establishment in the UK to join a UK VAT group. However, unlike in Sweden, the whole body corporate is part of the VAT group, not just the establishment (branch or head office) in the UK. Therefore services provided between an overseas establishment and a UK establishment of the body are not normally supplies for UK VAT purposes, as they are transactions within the same taxable person

The Skandia judgment did not consider the UK's different rules, which allow the whole body corporate into the UK group, and so did not rule this to be contrary to the VAT Directive. HMRC consequently does not consider that any changes to the UK grouping provisions are required.

The current grouping rules relating to UK VAT-grouped companies with overseas establishments will therefore be maintained. If an overseas company with a fixed establishment in the UK joins a VAT group, the whole legal entity (the company and its branches) becomes part of that taxable person.

To read more see BB02/15 at:
https://www.gov.uk/government/publications/revenue-and-customs-brief-2-2015-vat-grouping-rules-and-the-skandia-judgment

5. VAT appeal updates

When HMRC loses an appeal, it does not always accept the decision. HMRC publishes a monthly list of those cases in which HMRC are considering whether to appeal further or what the wider implications of the decision which they have lost might be. The detail can be found at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397113/VATAPPLS_final.pdf

6. New online VAT forms

You can download the form VAT1614H which is the option to tax land and property at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398046/VAT1614H_v2.0.pdf

In the construction industry a VAT 5L is used to advise HMRC of the specific nature of land and property supplies being made, including the associated VAT liability.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398041/VAT5L_v2.0.pdf

Derek Allen
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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 28 February 2015.