

AAT VAT update 14 June 2015

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

1. Updated Notice 700/24 on postage, delivery charges and direct marketing
2. HMRC webinars on VAT
3. Littlewoods: Court of Appeal decides in favour of company
4. To whom does incorrectly charged VAT belong: Premier Foods
5. BBC made exempt supplies of education to the Open University

1. Updated Notice 700/24 on postage, delivery charges and direct marketing

On 9 June an updated [VAT Notice 700/24](#) was published. Section 2 has been revised to include examples which illustrate when standard rate charges have to be applied. Section 3 is amended to improve understanding of what, in the context of printed matter, may be treated as a supply of delivered goods or a supply of direct marketing.

Notice 701/10 has also been amended and this deals with zero rating and printed matter. More details are [available here](#).

2. HMRC Webinars on VAT (free tuition to help with VAT returns)

HMRC have published details of their upcoming free webinars that offer to help businesses get their VAT returns correct.

What is VAT: an introduction

This webinar will cover what VAT is, how it works, when you need to register and what to do once you're registered

25 June 2015 15.00 to 16.00
6 July 2015 15.00 to 16.00
24 July 2015 09.00 to 10.00

If you are registered a [recording of this webinar](#) is now available.

VAT: now you're registered

This webinar will cover VAT rates, simple VAT accounting and things that aren't subject to VAT.

30 June 2015 12.00 to 13.00
13 July 2015 12.00 to 13.00

If you are registered a [recording of this webinar](#) is now available.

VAT accounting schemes

This webinar will cover choosing the right scheme for your business: annual accounting scheme, cash accounting scheme and flat rate scheme.

22 June 2015 10.00 to 11.00
17 July 2015 13.00 to 14.00

Watch the video now on [YouTube](#).

VAT on motoring expenses

VAT on cars, commercial vehicles, repair and fuel costs.

Watch the video now on [YouTube](#).

3. Littlewoods: Court of Appeal decides in favour of company

In a lengthy and detailed judgement written by Lady Justice Arden DBE, The Court of Appeal has upheld [Littlewoods Ltd's claim](#) for compound interest as recompense for VAT overpaid as a result of a mistake of EU law. The amount in dispute is £1.2bn.

Due to the amounts involved in this case and other similar cases, I expect that HMRC will appeal to the Supreme Court. As a taxpayer, it seems to me that there is a clear right and wrong from a moral perspective and HMRC are morally in the wrong to pursue this case but with the sums involved I can understand why HMRC feel it is necessary.

4. To whom does incorrectly charged VAT belong: Premier Foods

Premier Foods case may be of interest to other businesses in dispute with suppliers (and, possibly, HMRC) over wrongly charged VAT. This is a [judicial review judgement](#) delivered on 21 May 2015.

The supplier had wrongly charged £3,666,182 as "VAT" but this had been paid by, Premier Foods on supplies that were properly zero-rated. Premier Foods had claimed as input tax this amount. Then HMRC discovered the error when the supplier had gone into administration and it raised assessments on Premier Foods (Holdings) Ltd to disallow the claim for input tax. If HMRC had succeeded, Premier Foods would have been left out of pocket because its only right of recovery would have been as an unsecured creditor although the company in administration would have received a repayment of the VAT which it had paid.

Common sense says that HMRC should have seen that two wrongs are not going to make a right and that what HMRC was seeking to do was just daft. But these days HMRC seem all too often to display a remarkable lack of common sense or even an appreciation of what might be fair and just. I can just anticipate HMRC responding to such criticism by highlighting that it is a well-established principle in taxation that there is no equity in taxation. HMRC's problem with such an argument is that for VAT especially, the legislation needs to be interpreted and applied with a more purposeful interpretation, and for VAT the underlying principle is that it should be a tax on the final consumer but should be tax neutral on registered traders.

In the High Court, Supperstone J agreed with Premier Foods' contention that HMRC's proposal to repay the supplier in administration would leave Premier Foods bearing the burden of the wrongly charged "VAT" contrary to the underlying intentions of the VAT system. The supplier would be "unjustly enriched" by a repayment of the sum concerned to it. Accordingly, he quashed the assessments raised by HMRC to recover the "VAT" incorrectly treated as Premier's input tax and declared that the supplier would be "unjustly enriched" by a repayment of the incorrectly charged "VAT" (meaning that HMRC should have no liability to repay the wrongly charged sum to the supplier). A civil claim by Premier Foods against the supplier in administration(QCL) to recover the sum paid by way of VAT will not provide an effective remedy.

5. BBC made exempt supplies of education to Open University

Over a number of years the BBC had incorrectly charged the Open University VAT of around £21 million on supplies of production and broadcasting services. The BBC agreed to refund the tax to the Open University if it recovered it from HMRC. HMRC's refused the BBC's claim and so the Open University pursued the appeal as recipient of the supplies and the person who actually met the VAT charge. The First-tier Tribunal decided that the supplies qualified

for exemption (meaning that the BBC's refund claim succeeded) and Henderson J, sitting in the Upper Tribunal, has now endorsed that conclusion.

I dislike seeing disputes like this come to the Courts because it is just one pocket of government incurring expensive litigation against another pocket of government, and at the end of the day it is other taxpayers who meet the cost but there never was any prospective benefit to the consolidated fund.

Advisors who are involved in making exempt supplies between eligible bodies should read the decision [here](#).

Derek Allen
14 June 2015

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 2015.