

VAT update 14 November 2015

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

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2. extension to VAT on pension fund costs transitional rules
3. HMRC guidance in 19/2015 on members' golf clubs repayment claims
4. Distance Learning: what is the major element being sold?

1. Place of supply rules for exhibiting and 8th Directive recovery

In **Revenue and Customs v Finmeccanica Group Services SpA [2015] UKUT 378**, an Italian company exhibited at the Farnborough Air show. The Italian company claimed that their activity was advertising and had succeeded at the First-tier Tribunal (FTT). HMRC appealed to the Upper Tribunal (UT) successfully contending that the supplies were made in the UK and so a refund of the VAT was denied.

The Finmeccanica group of companies is a leading supplier of aerospace, defence and security equipment. In 2009 the group's turnover was some €18 billion. Their range of goods includes their participation in the Eurofighter Typhoon, helicopters, space stations, communications and security systems. FGS is a group service company. Its activities include acting as a central purchasing entity for products and services which are not critical to production equipment. These services include cleaning, transport, security, property and organising meetings and events.

The Finmeccanica group's marketing strategy involves having an enclosure at each Farnborough Airshow. In 2010 the group's enclosure consisted of a pavilion covering about an acre (4,280 m²) which included two chalets and a static display of about 1 ½ acres (7,630 m²). The total cost associated with the enclosure was some €14 million in 2010 (€12m for 2008). Putting it together and operating it was a very substantial exercise. In the open area were displayed a large number of helicopters and fighter aeroplanes; in the pavilion there were areas devoted to particular sister companies' products, meeting rooms etc.

FGS arranges hotel accommodation and flights for the entire group's staff. FGS invoices its sister companies for its services, charging the costs incurred with no mark-up. It included, and accounted for, Italian VAT on its invoices to its sister companies. It was common ground between the parties that the effect of these provisions was that FGS is only entitled to a refund of the VAT it paid to suppliers at the Airshow if the services supplied by FGS to its sister companies are treated as supplied in Italy rather than in the United Kingdom.

A show or a fair, whatever its theme, seeks to provide to a number of different recipients, as a rule in a single place and on a single occasion, a variety of complex services, with the purpose, in particular, of presenting information, goods or events in such a way as to promote them to the visitors. In those circumstances, it must be possible to regard a show or a fair as being covered by the similar activities referred to in the [fairs exception].

The Farnborough Airshow and the setting up of the Finmeccanica enclosure is the kind of activity in which a variety of people take part and the services provided by FGS relate to that activity. It does not matter that the services themselves are supplied only to a few people or to people all acting in the same capacity. In other words, the UT ruled that the place of supply was in the UK and the company was not entitled to recover the VAT under the 8th directive.

2. HMRC announce an extension to VAT on pension fund costs transitional rules

On 26 October, HMRC published yet another brief **17/2015** on HMRC's position following the decision of the Court of Justice of the European Union (CJEU) in *Fiscale Eenheid PPG Holdings BV cs te Hoogezand (C-26/12) (PPG)*. This case concerned an employer's entitlement to deduct VAT paid on services relating to the administration of defined benefit pension schemes and the management of their assets.

This brief announces a 12 month extension to the transitional period, which was due to end on 31 December 2015. It also provides an update on HMRC's position on possible arrangements for employers to achieve VAT deduction for the costs of administering occupational pension schemes and managing their assets going forward.

3. HMRC guidance in 19/2015 on members' golf clubs repayment claims

On 2 November 2015, HMRC issued further guidance indicating that, whilst a number of issues remain to be decided in litigation, it will now pay refunds of 50% or 33% of the sums claimed by golf clubs (depending on the level of green fees charged), provided that the claims comply with HMRC's previous guidance on the computation of the claims.

This brief (**19/2015**) provides an update on HMRC's work on unjust enrichment as announced in **Revenue and Customs Brief 25 (2014):VAT - supplies of sporting services by nonprofit making bodies** and explains what action members' golf clubs, nonprofit making sports clubs and their advisers which submitted claims need to take now.

HMRC's review found that if claims were credited in full some clubs would be unjustly enriched by 50% and others by 67%. Some clubs disagreed with the conclusions of the review and with HMRC's position that corporate days and supplies to tour operators are standard rated, as outlined in **VAT Information Sheet 01/15: claims by non-profit making members' sports clubs for overpaid VAT on supplies of sporting services made to non-members**. These issues have recently been heard by the FTT.

Although the question of unjust enrichment is still before the courts, HMRC has decided to pay or credit, subject to conditions, 50% or 33% (depending on the golf club) of the value of valid claims ahead of any court decision. HMRC will credit a claimant's VAT account if there is an outstanding debt.

The amount repaid or credited to each claimant will depend on the level of green fee charges. Where a golf club charges any green fee now or during the claim period, of over £100 per person for a round of golf, at any time of the year, HMRC will repay or credit 33% of its **VAT Information Sheet 01/15** compliant claim. All other claimants will receive 50% of their **VAT Information Sheet 01/15** compliant claim. HMRC considers the level of green fees is representative of a club's ability to pass on the VAT cost to its customers.

4. Distance Learning: what is the major element being sold?

Composite or mixed supplies have always been a difficult area for VAT and education has proved to be a contentious area. Books are zero rated but many education courses are exempt. Whereas, training used to be conducted on a face to face basis, often in lecture theatres, training has now evolved and distance learning using webinars and other media has become more common.

The First-tier Tribunal (FTT) has concluded that the supply of distance learning material by Metropolitan International Schools (MIS) was a zero rated supply of books rather than standard rated supplies of education. The VAT at stake in this case was £5m. I recommend that anyone advising a provider of education should review this decision and consider whether it might be worthwhile lodging protective claims.

Most colleges and places of further education will be eligible bodies and as such the supply of training will be exempt. But training has evolved and other organisations which provide training may be making a standard rated supply or if the training is just by way of books it might be zero rated. Distance learning using download would normally be standard rated. Online material is generally standard rated but distance learning courses, were the issue in this case. MIS and HMRC both contended there were single supplies – MIS of printed matter to which any other services were ancillary, and HMRC of education services to which the supply of printed matter was ancillary.

The courses in question included various “trade” courses, such as electrical and plumbing courses, and also animation and “games” courses, enabling people to become proficient in designing and animating computer and iPhone type games.

The **39 pages of the judgement** make interesting reading but the key finding of fact was that MIS supplied a teaching service from which the end result sought by customers from the supply made by the Appellant was to learn, and to accomplish that aim essentially by reading the vast amount of printed material. The Appellant’s essential supply was the sale of manuals. This is a zero rated supply. The effect that all of the other features of supply were appropriately regarded as “add-on” ancillary functions that ensured, where customers had a need or wish to request receipt of the various functions, that customers should simply go back to the manuals to the page or paragraph indicated, and re-read the manuals.

At paragraph 175 you can find a summary of the conclusions but what is clear is that this decision of the First-tier Tribunal is a complex one and I suspect that HMRC will appeal it to higher courts, even possibly to the ECJ.

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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 30 November.