

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

1. eligible body status denied to Finance and Business Training Limited
2. planning restrictions on occupancy deny zero rating for DIY build scheme
3. HMRC offer learning support with webinars and training on VAT
4. HMRC report to the Public Accounts Committee on 13 January

## 1. Eligible body status denied to Finance and Business Training Limited

Finance and Business Training Limited (FBT) provided training and education to students that that led to the grant by the University of Wales of degrees. It had argued that it deserved eligible body status so that the fees it charged for the courses were exempt. It had lost this argument at the Upper Tribunal and pursued the appeal to the Court of Appeal arguing that the UK application of the EU directive granting exemption for education (articles 131 and 132 of the principal VAT directive) was overly restrictive and failed to recognise the latest CJEU case law (Case C-319/12 *Minister Finansow v MDDP sp z oo Akademia Biznesu, sp komandytowa*), a Polish case which appeared to permit a wider application of the exemption than is permitted in the UK. In the UK, the supply of education by a college or a university is exempt from VAT under item 1(a) of Group 6 in Schedule 9 to the Value Added Tax Act 1994 ("VATA"), when read with Note (1)(b) .

A decision of the Court of Appeal establishes legal precedent and this decision will be of interest to advisers of organisations which have outsourced some of their teaching and tutoring functions. The UK has exercised a member state option to recognise non-public law bodies carrying on qualifying educational activities. This is a small group consisting of college and halls of universities that are integrated into the university's activities. The contrast is that FBT is not integrated to the university but supplies education support to the University. The difference means that FBT supplies to the University fail to be standard rated. The extra 20% of VAT incurred by a university may prove expensive when that VAT cannot be recovered by the exempt educational establishment.

The decision in [Finance And Business Training Ltd v Revenue and Customs \[2016\] EWCA Civ 7](#) confirms that the exemption is restricted.

## 2. Planning restrictions on occupancy deny zero rating for DIY build scheme

In [Revenue & Customs v Burton \[2016\] UKUT 20](#), the fact that occupancy was restricted to fishery workers denied the recovery of the VAT incurred in a DIY build scheme claim. HMRC refused a claim for refund of VAT under section 35 of the Value Added Tax Act 1994 ("the 1994 Act") in the sum of £8,566.72, incurred by Mr Burton in connection with the construction of a building at Hall Lake Fishery, The Fairways, Mansfield Woodhouse, Nottingham ("the Building"). The FTT had found in favour of Mr Burton so HMRC appealed to the Upper Tribunal.

A statutory planning consent was granted under section 78 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") in respect of land at Hall Lake Fishery. The planning consent contained a condition ("Condition 4") that: "the occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in Park Hall Lake Fishery or a widow or widower of such a person, or any resident dependents."

I am not surprised that Mr. Burton lost this appeal but I think it is disgraceful that HMRC pursued the appeal to the Upper Tribunal. To Mr. Burton, the VAT at issue of £8567 is important and significant. He won his appeal at the FTT and HMRC should have stopped there. To HMRC, the VAT at issue is trivial and if HMRC respected the spirit of the legislation they should have accepted the decision of the FTT even though it was wrong. That would not have established any legal precedent.

I find it distasteful that HMRC should have pursued this to the Upper Tribunal (UT). The dispute will already have cost Mr. Burton a considerable amount of time and worry. He was not represented at the UT and a written submission was presented for his arguments whereas HMRC had counsel. There was no equality at arms. This is an example of unacceptable enforcement and bad

management by HMRC. As a taxpayer myself, I do not wish to see HMRC spending more money pursuing an appeal over what is to HMRC trivial sums and trivial points.

HMRC should manage its resources better. HMRC deserves criticism for dissipating its resources pursuing taxpayers who cannot afford to employ counsel. HMRC may believe that its appeal has been justified by their view of the strict law being upheld. I think otherwise and I wish that HMRC would adopt a more commercial attitude and show more respect for the spirit of the law. However, if there is a lesson to be learnt from this it is that the DIY housebuilding legislation is strictly interpreted and taxpayers should remember that zero rating is derogation from the European VAT directive, yet the DIY legislation was enacted after the derogation for zero rating. In other words, UK taxpayers cannot expect to get any help from the European decisions and they need to anticipate that HMRC will apply the strict letter of the law.

### **3. HMRC offer learning support with online training and webinars**

Free, live webinars provided by HMRC last for an hour. You can ask questions during the presentation and get answers from the HMRC host. They're aimed at businesses about to register, or recently registered, for VAT. If you are not interested in this as a professional, it might be worthwhile telling clients about these free learning aids on VAT.

[Register and log in](#) at least 5 minutes before a live webinar is due to start.

There are also [webinars and online courses](#) designed for agents.

### **4. HMRC report to the Public Accounts Committee on 13 January**

I am not a fan of the Public Accounts Committee and, in particular, I disliked the way the previous chairperson would grandstand her opinions. But the wet winter weather led me to watch the session on 13 January which I might summarise as a lot of hot air and of little substance.

Around half way into the session at 15:52, the question of VAT abuse by overseas traders selling through Amazon, E-bay and other online traders arose. This followed an unconvincing performance which attempted to extol the virtues of the digital developments being introduced by HMRC as well as a discussion of the office closure programme.

I treat politicians' statistics with a pinch of salt but it was suggested that overseas traders are evading £10bn of VAT by selling through Amazon, Ebay and similar online trading facilities. I do not know the true position but watching the responses given by Dame Lin Homer and her colleagues was an unsettling experience.

I used to watch Dave Hartnett in similar sessions and I had a reluctant admiration for Mr. Hartnett because I believed that he did a difficult job well and his command of his brief was impressive. I felt sorry for Dame Lin Homer because her responses were unconvincing and she seemed to be struggling.

Meeting started at 2.35pm, ended 4.52pm. I cannot recommend watching it all but the [VAT trading](#) bit at 15:52 onwards is worth a listen. It moves on to tax evasion at 16:05.

Derek Allen  
14 February 2016

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 29 February 2016.