

VAT and emerging trends

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Transfer of business as a going concern

R&C Brief 11/2016

- Section 43(1), Value Added Tax Act 1994
- Intelligent Managed Services Limited ([2015] UKUT 0341 (TCC))
- Transfer of IMSL's banking support services business
- VAT grouping treats the representative member as carrying on the business of each member of that group
- It doesn't change the nature of the businesses carried on by the individual members whose activities remain separate as a matter of fact
- Retrospective claims for four years

Group VAT registration – the future?

Two or more corporate bodies or limited liability partnerships VAT Act 1994 ss 43 to 43D

Trading under a single VAT number allocated to the representative member

They are under common control, for example one or more companies are subsidiaries of a parent company

The future?

Larentia & Minerva and Marenave judgments C-108/14, C-109/14

Art 11 PVD “ any persons established in the member state who, while legally independent, are closely bound to one another by financial, economic and organisational links”

Input tax and zero rating

Friends of the Earth [2016] UKFTT 0411 (TC)

- £3 minimum payment per month for supporters
- Used Earthmatters magazine to encourage people to give in excess of £3
- The magazine was one of the benefits
- Was any part of the £3 zero rated?
- Street fund raising and training costs incurred substantial VAT



Land and property changes

R&C Brief 13/2016

- **Change in policy re construction and conversion costs**
- **A single dwelling can be created from more than one building**
 - **Provided it is constructed/converted at the same time; and**
 - **No part is occupied before the dwelling is complete**
- **Consider claims four year cap**



Land and property changes

R&C Brief 9/2016

- Permitted development rights
- Individual planning application is not necessary because statutory planning consent has been granted though PDRs
- HMRC will continue to require evidence to be produced that the work is lawful in order for the zero or reduced rate of VAT to apply or for a claim to be eligible under the DIY House Builder Scheme.

Land and property changes

HMRC require evidence of planning from at least one of the following:

- a) Written notification from the LPA advising of the grant of prior approval; or
- b) Written notification from the LPA advising that prior approval is not required; or
- c) Evidence of deemed consent (ie evidence that the LPA has been written to and confirmation that there is no response from them within 56 days).

In addition, all of the following (where documents have been created): plans of the development, evidence of the prior use of the property (eg evidenced by its classification for business rates purposes etc.), confirmation of the relevant planning legislation for the development and a lawful development certificate where one is already held.

Flat rate scheme percentage can be backdated

JJK Engineering Ltd [2016] UKFTT 615 (TC)

- The FTT allowed the company to backdate the change to their business category from "Architect, civil or structural engineer" to "Any other activity not listed elsewhere".
- Work is almost entirely connected with plant and equipment.
- Selected "Architect, civil or structural engineer" on the advice of his accountant.
- In 2015 his accountants requested that HMRC change his category to "Any other activity not listed elsewhere" and for this change to be backdated for four years.

Flat rate scheme percentage can be backdated

- HMRC agreed to change the category going forward, but refused to apply the change retrospectively as his original choice had not been unreasonable.
- The FTT allowed the appeal saying:
 - “Architect, civil and structural engineer” is a narrow description of professions which are concerned with land and buildings.
 - FTT stated that “civil engineers” did not include all engineers.
 - The choice of sector was not reasonable because it did not describe the business that the company actually carried on.
- The percentage difference between these two categories is 2.5%.



Reasonable Excuse – 10% surcharge

McNamara Joinery Limited [2016] UKFTT 529 (TC)

- December 2015 VAT Return due 7 February 2016
- Return filed before the deadline but payment made on 26 February 2016
- Three previous late returns therefore 10% surcharge levied
- Telephone request for time to pay made numerous occasions commencing 5 February – line to HMRC kept disconnecting

Reasonable Excuse – 10% surcharge

- Eventually contact made on 12 February and HMRC acknowledged attempts to contact them before the deadline of 7 February.
- HMRC maintained that the client and agent should have been aware that there was a strong likelihood that there would be a large volume of calls being made to taxpayers prior to the deadline date and as a result they should have expected the delay!!
- Rather than expect delays the judge said the taxpayer would expect the telephone to be answered without delay and promptly threw out the appeal.



Overseas suppliers

Selling via online marketplaces and fulfilment houses

- Required to appoint tax representative based in the UK
- Requirement to provide security before VAT registration granted
- Joint and several liability of online marketplace/fulfilment house
- Consultation ongoing

VAT and Brexit

The Legals

- Accrued rights – future legal changes should not be retroactive but will there be access to CJEU if doubt?
- Potential for a gap in legislation if Parliament does not incorporate the relevant EU legislation or enact new law
- Eg definition of electronically supplied services is only found in EU Regulations, Littlewoods compound interest case precluded by domestic law now heading to the Supreme Court
- Direct and immediate link test for input tax recovery comes solely from the EU, Midland Bank case



VAT and Brexit

The future of zero rating and exemption

- Could Schedules 8 and 9, VAT Act 1994 be simplified?
- Sub One case judge commented that businesses should have more clarity
- Will new interpretation develop?



VAT and Brexit

Other considerations

- Intrastat required?
- EC Sales Lists?
- Imports and exports
- Customs documentation



VAT and Brexit

- Cases in the courts could be argued on pre and post legislation
- Start cases now where EU legislation at point
- Variations to contracts to reflect potential changes in legislation
- Triangulation
- MOSS and TOMS



Thank you for listening

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