

Constable VAT Consultancy

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Bad Debt Relief claim for 'VAT only invoices'

Simpson & Marwick (SM) is a firm of solicitors in Edinburgh. The greater part of their practice relates to the provision of legal services in respect of insurance claims. In many cases the insurers concerned settled only the fee element of SM's bills and 'VAT only' invoices were issued to the VAT registered insured parties. The VAT invoices were not always paid and a claim was made for Bad Debt Relief. HMRC contended that where a claim is made for relief of a bad debt, the amount of the claim is calculated by applying the VAT fraction of the outstanding amount, rather than ignoring the net payment received. An assessment was raised and SM appealed.

The Upper Tribunal allowed Simpson & Marwick's appeal and reversed the First-Tier Tribunal's decision stating that *'the specialty in the present case is that the unpaid amount consists entirely of VAT and, importantly, is clearly identifiable as consisting entirely of VAT. That is because the unpaid amount is contained in invoices that are for VAT only, as it is only the VAT component that is payable by the policyholders; the net price of the appellants' services is paid by the insurance companies'*.

This case will be of interest to any business that has issued 'VAT only' invoices that remain unpaid. It remains to be seen if HMRC will appeal this decision and how widely it can be applied.

Compound Interest – Advocate General (AG) Opinion

The AG of the ECJ has released her Opinion in the case of Littlewoods v HMRC. The case concerns whether taxpayers who have overpaid VAT imposed contrary to EU law are entitled, in addition to repayment of VAT, to payment of compound rather than simple interest. The AG opined that taxpayers have the right to reimbursement of the wrongly collected VAT and a right to payment of interest on the principal sum to be reimbursed. The question whether that interest should be simple or compound interest is to be determined by individual Member States in accordance with the principles of effectiveness and equivalence.

The AG concluded that payment of simple interest does meet the principle of effectiveness but there would be a breach of the principle of equivalence if the local court should conclude that the national rules governing payment of interest on VAT collected in breach of EU law are less favourable than the rules governing similar domestic interest claims. The ECJ's judgment is expected within the next three months and although this may not follow the AG's opinion if it does it is likely that claims for compound interest will be unsuccessful.

Three Counties Dog Rescue (TC) – Transfer of ownership of dogs by charity in return for 'donation'

TC is a registered charity with the aim to accept, care for and find homes for lost strayed and unwanted dogs of all breeds and to ensure their wellbeing thereafter. The dogs are passed to new owners in return for a payment which TC described as a donation. TC applied to be registered for VAT, and lodged a reclaim of input tax on the basis that it was making zero rated taxable supplies. HMRC rejected the claim on the basis that the charity was 'merely re-homing dogs in return for a voluntary donation', and was not making any taxable supplies. The charity appealed, contending that the donations which it received from the new owners should be seen as consideration for supplies of the dogs, so that it was entitled to be registered for VAT.

The tribunal accepted this contention and allowed the appeal, finding that although the charity described the payments from new owners as 'donations', they were in fact compulsory and that if a prospective owner refused to make a donation, *'the re-homing process would be terminated as it would be deemed that if the new owner was unable to afford the contribution, he would be unable to cover the future upkeep costs of owning the animal'*.

Wakefield College – Whether building intended solely for use by charity

This appeal concerns the decision of the First-tier Tribunal (reported on in our 3 March 2011 VAT Focus) that the construction of a new college building did not qualify for zero rating for VAT purposes as a building used solely for a relevant charitable purpose because income from fee paying students, a café in the building and hairdressing services provided by students meant that the college had 'business activities'.

The college appealed that decision, contending that even if it has business activities it does not necessarily follow that the building is disqualified from zero-rating because it is common ground that business use can be ignored if it is de minimis.

The Upper Tribunal allowed the appeal and remitted the issue to the First-tier Tribunal to rule on the de minimis issue.

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Thinking outside the box