Constable VAT Consultancy

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French Treatment of Yacht Charters

The French Authorities have announced that as of 15 July all yacht charters commencing in French waters will be subject to an effective TVA rate of 9.8%. This is a 50% reduction of the standard TVA rate and is based on an assumption that 50% of the time under charter will be outside EU waters for yachts capable of international travel (the definition of which has yet to be agreed). Supplies of goods and services to a French commercial yacht charter remain, for the moment, zero-rated for TVA purposes.

'Online' medical services are VAT exempt

Prescription Eyewear Limited, trading as Glasses Direct, supplies glasses online and had accounted for VAT on all their income. They submitted a VAT refund claim (in excess of £400,000) on the basis that 13.4% of their supplies were exempt from VAT as medical services because the dispensing of glasses is supervised by a qualified dispensing optician. HMRC refused the claim. The Tribunal found that the taxpayer did supply medical services through the advice provided by relevantly qualified medical staff. Thus an element of their supplies falls within the exemption for dispensing services. This decision differed from some earlier cases where the input of qualified medical staff was much less or absent.

BBC's supplies exempt

The BBC invoiced the Open University (OU) for the costs of broadcasting TV and radio programmes. HMRC accepted that supplies made after August 1994 were exempt under Item 4, Group 6 Schedule 9 of the VAT Act 1994. The BBC applied for a repayment of the VAT charged in the period 1978 to 1994, which HMRC refused on the grounds that during that time UK legislation did not allow exemption. European Legislation, which had direct effect during that period, exempted supplies made by "bodies governed by public law having an educational aim or by other organisations defined by the Member State concerned as having similar objects." The Tribunal decided that the BBC was not a body governed by public law nor did it have the required educational aim. However, it was an organisation with similar objects so the appeal was allowed.

Residential Conversions and DIY claims

The case of Alexandra Countryside Investments (ACI) is of interest to the property development sector. HMRC's current policy is that the sale of a dwelling created by converting a property, which contains an element of an existing dwelling, does not qualify for zero-rating if the new dwelling incorporates part of an existing dwelling (meaning VAT recovery on related costs is restricted). However, if a DIY house builder submits a claim for a similar conversion the VAT on the cost of converting the non-residential part of the building may be reclaimed.

ACI bought a pub and converted it into two semi-detached houses. Part of an existing flat for the pub manager had been incorporated into both houses which HMRC said meant that the subsequent sale of the houses could not be zero-rated.

The Tribunal looked at the Jacobs case in detail. An ex-school, containing a flat for the headmaster, was converted into a residence for Mr Jacobs. This resulted in a new residence with four additional flats. An element of the original flat was incorporated into the new residence. The Court of Appeal decided that as the resultant number of dwellings was greater than the number of dwellings prior to the works then it meant that the "additional dwelling or dwellings" criteria in Note 9 was met and the DIY claim was valid. Whilst HMRC had accepted this decision they had taken the view that this only applied to DIY claims (under section 35 of the VAT Act 1994) and not the zero-rating provisions (Section 30 of the 1994 VAT Act). The current Tribunal saw no reason for the distinction of the interpretation of Note 9 between s30 and s35 claims and allowed the appeal, contrary to an earlier case (Calam Vale) where the Tribunal had not had the benefit of the Court of Appeal's decision for Jacobs. The Tribunal also commented on the brevity, inaccuracy and attitude of HMRC's formal review letter which the Tribunal thought effectively said "We" (HMRC) "are right and you are wrong" for which HMRC apologised to the Tribunal.

If the sale of a converted property is zero-rated then VAT may be reclaimed on all conversion costs, including the conversion of the previously residential part of the buildings. Thus developers may be able to recover more VAT than a DIY claimant, who is restricted to reclaiming VAT only on the conversion of the non-residential part of the building. This judgment still fails to deliver parity between developers and DIY claimants.

There may be grounds to revisit cases where repayments of VAT have been refused on a similar basis.

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Thinking outside the box