

Constable VAT Consultancy

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Recent HMRC Briefs

Although the VAT Tribunal has been fairly quiet in recent weeks, HMRC has issued a run of Revenue and Customs Briefs (RCB) on various subjects. These are summarised below.

RCB [13/13](#) confirms the VAT treatment of loss adjusting services supplied in connection with marine and aviation insurance claims. HMRC are concerned that many businesses have been treating such services as zero-rated. HMRC consider that the zero-rate only applies to surveys necessary to establish the seaworthiness, airworthiness or classification of a qualifying ship or aircraft to enable it to be registered and to therefore meet the **direct needs** of the ship or aircraft. Such surveys require a physical inspection of the ship or aircraft. Although loss adjusting services may contain an element of inspection HMRC do not consider these qualifying surveys for the purpose of the zero-rate as they meet the needs of the insurer in assessing an insurance claim, rather than the direct needs of the ship. (Note – certain surveys carried out under statutory authority may be outside the scope of VAT).

Businesses that supply loss adjusting services in the UK should account for VAT at the standard rate, where insurers receive these services from abroad they should account for VAT at the standard rate under the reverse charge procedure.

RCB [15/13](#) has been issued following the High Court judgement in the *Investment Trust Companies* (ITC) case. The Brief sets out the options for customers affected by the ITC case to make claims in restitution against HMRC for output tax wrongly charged. Following the decision customers affected are entitled to bring claims to the High Court (claims for less than £30,000 must be brought in the County Court), claims made to HMRC will not be valid.

The time limits for these claims do not come under VAT legislation (four years) instead the time limits are provided by the statute of limitations; for England & Wales this is six years from the date the cause of action occurred or six years from the mistake giving rise to the cause of action was discovered.

Following the outsourcing of certain services as part of the streamlining of the NHS, RCB [16/13](#) clarifies HMRC's policy on when laboratory pathology services are exempt from VAT. The Brief confirms that all **state-regulated** businesses which supply laboratory pathology testing services, directly relating to the provision of healthcare for individual patients, are exempt from VAT whether they supply their services to the NHS or to independent hospitals. It makes no difference whether it occupies premises with or within a hospital or in a separate location. An institution is 'state regulated' if it is approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to legislation. State-regulated pathology laboratories are 'qualifying health institutions' for the purpose of the health exemption. The Brief gives fully details of the reasons for exemption.

As a result of discussions with the insolvency profession following the *Paymex Limited* tribunal case HMRC has issued Brief [17/13](#). The Brief clarifies the VAT treatment of Insolvency Practitioners' services in various common situations.

Following the recent ECJ decision in the *Newey (t/a Ocean Finance)* HMRC has issued [18/13](#). Mr Newey was a UK loan broker, who arranged loans by UK lenders to UK borrowers. His services were exempt from VAT and he could not recover VAT on advertising services he received. Mr Newey set up a Jersey Company (J), and granted it the right to use the business name Ocean Finance. Broking contracts were concluded between the lenders and J, and the broking commissions were paid to J. J then entered into a contract for the supply of advertising services.

HMRC took the view that, notwithstanding the contractual terms, the advertising services concerned were supplied to Mr Newey in the United Kingdom and were therefore taxable in the United Kingdom. The CJEU decided that although contractual terms should be taken into consideration, they are not decisive. They may be disregarded where they do not reflect economic and commercial reality and are a wholly artificial arrangement set up with the sole aim of obtaining a tax advantage. It is now for the Upper Tribunal to decide the case in light of this.

HMRC have confirmed in this Brief that it will continue to investigate (what it considers to be) artificial contractual relationships established for tax avoidance purposes and look through to the underlying economic reality of transactions.

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Thinking outside the box