Constable VAT Consultancy

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Recent HMRC Briefs

HMRC has issued Revenue and Customs Brief 26/13, which provides information on changes to rules for zero-rating supplies of goods for export outside the European Union. These changes relate to supplies to businesses that are **established** outside the UK but VAT registered in the UK, to allow **indirect export** sales to such businesses to be zero-rated by the UK supplier. The Brief gives examples of cases where the new rules will apply. Businesses who have in the past charged UK VAT in respect of supplies of goods in these circumstances may be able to claim refunds, subject to satisfying the conditions for evidencing that an indirect export took place and the 'unjust enrichment' rules.

Dwellings and restrictive covenants

Roy Shield ran an equestrian business and applied for planning permission to construct a house close to the business. This was granted but with a restrictive condition (since removed) that the house could only be occupied by a manager solely employed by the equestrian business. When he constructed the house Mr Shield sought a refund of VAT under the DIY house builder scheme.

HMRC rejected the DIY VAT claim on two counts; firstly that the house was built in the furtherance of business and secondly that the restrictive condition meant that the property did not qualify as a dwelling as the use and separate disposal was prohibited. The Tribunal dismissed both of HMRC's contentions deciding that the fact that the house was near the business did not mean it was built in the furtherance of business and the restrictive condition was one of occupancy not use or disposal.

In another case concerning restrictive covenants, Catering Solutions (North East) Ltd converted a derelict barn into a house to be used by a director of a company for part of the year and holiday accommodation for the rest of the time. Most of the barn was demolished leaving only the gable end walls and the conversion work was zero-rated as being construction of a new dwelling.

HMRC said that zero-rating did not apply due to a restrictive clause in the planning permission preventing the same person from being in occupation for more than six weeks in any calendar year. The Tribunal found that the notes to the legislation make it clear that where the property has such a restrictive clause on occupation zero-rating does not apply (the retention of the gable walls also meant that zero-rating would not apply). VAT was therefore due on the work at the reduced rate, as the legislation relating to **conversion** of a barn into a residential dwelling does not contain a note restricting the application of the reduced rate where residence throughout the year is restricted.

Investment costs

The Chancellor, Masters and Scholars of the University of Cambridge made a claim to recover a proportion of the VAT incurred on the management fees of their endowment fund. This was on the basis that the income generated by the fund was used to support both the taxable and exempt activities of the University. HMRC argued that although VAT on capital raising costs could be treated as an overhead of the business (following the Kretztechnik case) this was not the case here and so the principle didn't apply. The First Tier Tax Tribunal disagreed with HMRC and believed that the Kretztechnik case had wider implications, allowing the taxpayer's appeal.

Abusive schemes

The case of *The University of Huddersfield Higher Education Corporation* was originally heard in 2002. HMRC challenged a lease and lease back arrangement that had enabled the University to recover input tax on the refurbishment of a college property. The case was referred to the ECJ, which decided that lease arrangement was an economic activity but then referred the matter back to the First Tier Tribunal to answer the question as to whether the arrangement was abusive allowing HMRC's assessment to stand.

The Tribunal made a number of findings. Whilst the intention of the University was to gain a tax advantage there was, at the time of the assessment being raised, no absolute tax saving as the University had to pay output tax on the leaseback of the property to them. As such there was no tax advantage at that time. The absolute saving arose when the arrangement was collapsed (2004). The judge noted that it is the nature of a lease that they may be surrendered at any time. HMRC's contention that the ability to collapse a lease/leaseback resulted in an abusive scheme inferred that any lease or leaseback could be treated as abusive, which was rejected by the Tribunal.

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Thinking outside the box