

# Constable VAT Consultancy

## VAT Focus 18 September 2013

### Inaccurate legislation

Rapid Sequence supplies qualified UK registered anaesthetists to the NHS as locums. HMRC ruled that the supply did not fall within the exemption for medical services. Therefore the business was liable to register for VAT retroactively and account for UK VAT.

The Tribunal agreed with HMRC that the supply made by Rapid Sequence was of staff, not exempt medical care. However, the relevant item of UK VAT legislation (Item 5 Group 7 Schedule 9 VAT Act 1994) under which Rapid Sequence had sought to exempt their supplies was found by the Tribunal to be worded in such a way as to extend the exemption beyond the scope permitted by the EU legislation. HMRC's suggestion, accepted by the Tribunal was that there should be a "conforming construction" adopted for Item 5. This meant interpreting "the provision of a deputy for a person registered in the register of medical practitioners" as "the provision of [medical care services provided by] a deputy for a person registered in the register of medical practitioners". The Tribunal in dismissing the taxpayer's appeal said it understood if it felt this outcome was "highly unsatisfactory".

### Proof of intention

Ebley House Limited (EH) sold a property in 2007, which it had acquired and opted to tax in 2001. The property was originally designed as a children's home. The purchaser (a charity) had told EH it intended to use the property as a residential school. Therefore, the property was to be used for a 'relevant residential purpose' and the option to tax was disapplied and no VAT was charged on the sale. HMRC contended that the intended use was not clear at the time of the sale and that the purchasing charity had made an application for planning permission to use the property as a non-residential school (it already had permission to be a residential school). As such the option to tax could not be disapplied and the sale was standard rated.

After acquiring the property the charity (which ran a number of residential and non-residential institutions for young people with learning difficulties) decided to use it as their headquarters. The evidence presented to the Tribunal about the charity's intention at the time of the sale was not definitive. The issue of the dual planning permission was said to be not uncommon as it established the flexibility of the site. In 2013 the purchasing charity issued a letter stating that the intention immediately prior to the purchase in 2007 was to use it as a residential school. Despite the letter being written six years after the sale the Tribunal saw this as no reason why its contents should not be accurate. The fact that the chief executive of the charity had signed the letter meant, in the eyes of the Tribunal, that it would have been written with careful consideration to its contents.

Although the issuing of a certificate by a purchaser in a situation such as this is not a legal requirement the costs and time incurred by EH show that it is a good idea to get such a document from a purchaser before disapplying an option to tax on a property due to the intended use of the property by the acquirer.

### Single or mixed supply

Zooplay Limited is a crèche offering birthday party packages which included supervised play activities (exempt) and party food and bags (standard rated). The taxpayer argued that they were making a mixed supply and should apportion the VAT. However, for a birthday party, the supplies could not be bought separately and were charged at one price. The Tribunal took the view that there was a single taxable supply of facilities for a children's party being made, even though the additional cost of the party element was less than the stand alone exempt play charge.

### Reasonable excuse

Angus Alliance Painters Ltd appealed against a default due to a change in their bank's terms and conditions in making electronic payments. Although advertised as an improvement to services the bank's "new" timings resulted in an additional day before the monies were transferred to the recipient's account. The taxpayer's view that an additional day was not an improvement and the fact that the change was mentioned in a brochure but with no implementation date was seen as a reasonable excuse by the Tribunal.

The case of Binap shows the importance of establishing with HMRC the basis for a default surcharge being issued. The taxpayer appealed on the basis that the period in question was subject to an agreed Time To Pay agreement and late payment should not have resulted in a surcharge. However, it became apparent that surcharge was issued because the VAT return had been received late. Although HMRC admitted that correspondence regarding the default had not made the reason for it being issued clear, the Tribunal could not allow the taxpayer's appeal.

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Thinking outside the box