Constable VAT Consultancy

VAT Focus 21 February 2012

Intra EU Supplies from Germany – new evidential requirements

With effect from 1 January 2012 the German Ministry of Finance has tightened up its regulations governing the type of evidence required to support the fact that goods have been removed from Germany to other Member States. The new procedures require confirmation, signed by the recipient, that the goods arrived in the country of destination, as well as a copy of the invoice relating to that intra-EU supply.

If you are involved in the acquisition of goods from Germany it is possible you will be asked to sign and return a document confirming receipt of goods. This document may be referred to as a Gelangensbestätigung.

This is a German initiative and the UK rules remain unchanged.

Pre-registration claims following de-registration of the same legal entity

HMRC has revised its policy on the evidence required to support an input tax claim in respect of goods held at de-registration by a business that subsequently re-registers. As no invoice exists to evidence the tax paid at de-registration, HMRC's policy previously was that there could be no input tax deduction under the law when the business re-registered, although an informal concession allowed this relief.

HMRC now consider that its discretion to allow alternative evidence means that such tax can be reclaimed where there is proof that the VAT was paid at de-registration, the normal time limits have not been exceeded and the normal 'business use' criteria are met.

This policy change is explained in more detail in Revenue and Customs Brief 01/12.

Separation of business – HMRC direction upheld

A recent VAT Tribunal Case *Howard and Jennifer Patrick* highlights the risk of a direction from HMRC that separate businesses be amalgamated if HMRC consider that they have been separated artificially.

East Hook Farm in Pembrokeshire is run as a partnership by Mr Howard Patrick and his wife, Mrs Jennifer Patrick. The business, which is VAT registered, includes the traditional farming activities of beef and sheep production as well as a haulage operation and the provision of self-catering accommodation in an outbuilding that has been converted into a holiday cottage.

In addition to, and quite separate from, the farm partnership, Mrs Patrick operates a Bed and Breakfast business as a sole trader. The farmhouse is used to accommodate B&B guests with two additional rooms, in the same building as the self-catering cottage, used for those guests unable to use stairs or requiring disabled access. As its turnover was below the VAT registration threshold this business was not registered for VAT.

HMRC challenged the treatment of the B&B as a separate business and issued a direction that the farm and the B&B should be treated as a single taxable person, registered for VAT. This direction was upheld by the Tribunal.

Grants found to be consideration for supplies of services

A recent Tribunal case, Aberdeen Sports Village (ASV), highlights the need to consider carefully the funding arrangements in joint ventures and in all situations where 'grants' are paid in return for certain activities being undertaken.

ASV is a company formed to operate a sports facility and is a joint venture between Aberdeen University (AU) and Aberdeen City Council (ACC). ASV received 'grant' funding from both these bodies and took the view that this was outside the scope of VAT.

HMRC disagreed and the Tribunal rejected ASV's appeal against the decision on the basis that AU and ACC both received benefits in return for the funding and that this was therefore consideration for taxable supplies.

Thinking outside the box