Constable VAT Consultancy

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Changes to the treatment of single purpose face value vouchers

Following the European case of *Lebara Limited (C-520/10)*, HMRC has issued Revenue & Customs Brief 12/12 setting out the changes to the VAT rules for single purpose vouchers to be included within the current Finance Bill and having retrospective effect to **10 May 2012**.

Lebara operated a telecommunications business in which international telephone calls were made available to individuals in other Member States through the use of face value vouchers. Lebara sold the vouchers to distributors in other Member States who then sold them on to other distributors or direct to the end consumers. The European Court of Justice (CJEU) found that there was a supply of services from Lebara to the distributors, but there was no supply by Lebara on redemption to the end customer. As a result, UK legislation for certain types of vouchers is incompatible with EU law and it has been necessary to amend the VAT treatment of so called single purpose vouchers. A single purpose voucher is a voucher that carries the right to receive only one type of goods or services which are all subject to a single rate of VAT. Such vouchers will be subject to VAT when they are sold, rather than when they are redeemed.

Businesses issuing and redeeming these types of vouchers will not be required to account for VAT under the new rules until the Finance Bill receives Royal Assent. They will then need to make an adjustment to cover the intervening period; alternatively, businesses may opt to implement the changes straight away to avoid the need for an adjustment. The changes also include transitional provisions where a single purpose voucher has been issued before 10 May 2012 but is redeemed on or after this date.

Out-of-time claims for repayment of indirect taxes

Following the European case of *Banca Antoniana (C-427/10)*, HMRC has issued Revenue & Customs Brief 13/12. Banca Antoniana Popolare Veneta (the bank) is an Italian bank which charged VAT on services supplied to its customers between 1984 and 1994. In 1999 the Italian tax authority announced it was their view that these services ought to have been exempt from VAT. The bank's customers made claims against it for repayment of the VAT wrongly charged to them and the bank was ordered by the Italian courts to pay those claims. The bank then made a claim against the Italian tax authority for the VAT that it had accounted for on the supplies to those customers. Whilst the customers' claims were subject to a ten-year time limit, taxpayers' claims were subject to a time limit of two years from the date of payment or, if later, from the date on which the conditions for bringing the claim were met. The Italian tax authority rejected the bank's claim on the grounds that the claim was made out-of-time and that decision was upheld by the courts.

The ECJ found that although it is compatible with EU law for Member States to lay down reasonable time limits for making claims and for there to be different time limits for different types of claim, in this case the bank was totally deprived of any opportunity to make a claim and in such cases the principle of effectiveness requires the Member States to provide a mechanism to claim a refund from the tax authority. HMRC's view is that "*this case is very fact-specific and that it does not automatically introduce an opportunity for taxable persons to make out-of-time claims for repayment of VAT wrongly accounted for in circumstances where they are legally required to make repayments of 'tax' to their customers*".

Vehicle Control Services Limited (VCS)

VCS appealed the decision of the First Tier Tribunal that certain penalty charges levied by VCS on behalf of landowners on motorists are subject to VAT at the standard rate, contending that the correct position in law is that the payments received are outside the scope of VAT, either because they are a penalty/damages for breach of contract or because they are damages for trespass. HMRC argue that there is no contract between VCS and the motorists that can be subject to a breach and that VCS acquired no licence to occupy land capable of giving it rights to sue for trespass and submitted that the First Tier Tribunal was right to find monies received by VCS are consideration for services to the landowner.

The Upper Tier Tribunal found, firstly, that VCS had no right to claim damages against motorists who parked in breach of the relevant restrictions, and that the penalty charges did not constitute, in VCS' hands, such damages. Secondly, they found that there was no contract between VCS and the motorist, and that the penalty charges could not constitute damages for breach of such a contract.

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