

Constable VAT Consultancy

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Addressing borderline anomalies: Summary of responses by HMRC

HMRC has published its summary of responses to the consultation on the Budget proposals on addressing borderline anomalies, which CVC responded to. As a result of the responses significant amendments have been made to the proposed changes to the rules regarding zero-rating alterations to listed buildings. The most important changes are that zero-rating can apply to projects where listed building consent was applied for before 21 March 2012 and the transitional period will extend until 30 September 2015. These changes are intended to ensure that the majority of qualifying projects underway at the time of the budget qualify for transitional relief.

Changes have been made to the following areas of the Budget proposals as a result of this consultation:

- Catering – ‘hot takeaway food’ and ‘premises’ - definitions and tests have been clarified.
- Self storage – it is clear now that stabling of livestock is not included and minor changes have been made to the ‘connected persons’ test.
- Hairdressers’ chair rental – the legislation will be better drafted to clarify the position regarding when a supply will be subject to VAT.
- Holiday caravans – VAT will be introduced at the reduced rate on static holiday caravans, whilst preserving zero-rate on residential caravans.

Full details can be found in [Summary of Responses: VAT - Addressing borderline anomalies](#).

Atchem Limited – Whether option to tax made on or before completion of TOGC

The issue of this appeal is whether Atchem (‘A’) decided to opt to tax a property on or before completion of its purchase of the property so as to enable the transaction to be treated as a transfer of a business as a going concern (TOGC).

A is primarily a retail chemist and pharmacy business. In 2008, A decided to purchase a chemist’s shop, not to occupy it but as an investment. On 16 April, the directors of A held a Board Meeting to confirm the purchase of the property “at the cost of £300,000 plus VAT”. The minutes of the meeting record that: “*The board confirmed the purchase of the property and confirmed that Mr Vijay Mehta should conclude the transaction and do the necessary that may be required to acquire this property under TOGC subject to advice from the solicitors*”. Condition 15.3 of the sale contract stated that the buyer confirms that it has made, or will make before completion, a VAT option and notified it in writing to HMRC. Completion of the sale took place on 16 May 2008 and was treated as a TOGC.

During a routine VAT inspection of the seller’s records, HMRC asked to see evidence that A had opted to tax the property in order to support the treatment of the sale as a TOGC. On or shortly after 3 December 2012, A submitted a form 1614A in relation to the property to HMRC. HMRC accepted that there was no suggestion that A was trying to avoid tax but HMRC could not accept the belated notification. The company did not produce any evidence that it had decided to opt the property on or before 16 May 2008. The minutes of the board meeting stopped short of evidencing a decision to opt to tax. The Tribunal dismissed the appeal concluding A has not satisfied them that it decided to opt to tax the property on or before 16 May 2008.

Bloomsbury Wealth Management – Whether supplies of intermediary services or management and advice

Bloomsbury is an IFA providing services in respect of financial investments to high net worth individuals. Bloomsbury provides high level advice to clients on asset allocation, types of assets and choice of fund managers. Once an individual decides to become a client of Bloomsbury, Bloomsbury will arrange for the client’s financial assets to be transferred to an unconnected third party nominee and the client authorises Bloomsbury to communicate purchase instructions on its behalf. Once investments have been acquired, Bloomsbury conducts a quarterly ‘rebalancing’ of the portfolio to ensure it meets the client’s needs. This does not involve any advice by Bloomsbury. Bloomsbury charges its clients for this service, which it treats as VAT exempt. HMRC argued that the fee should be subject to VAT as Bloomsbury did not provide an exempt intermediary service.

The Tribunal held that the service provided by Bloomsbury could be VAT exempt as the primary service provided was the creation and maintenance of a portfolio of units for its client.

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Thinking outside the box