Constable VAT Consultancy

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Supplies of room hire and catering

HM Revenue & Customs have issued a Brief stating that they view the supply of a room and catering as both being taxable even if the catering is supplied by a different party to the one supplying the room.

HMRC point out that although this view has been part of public notice 709/3, Hotels and holiday accommodation, since October 2011, HMRC will not take action to alter any "incorrect" treatment before 22 January 2013.

If you are operating a hotel, inn, boarding house, or similar establishment and use third party caterers this is an important issue if you are currently treating the room hire as exempt. Venue suppliers will also need to consider the commercial impact where the hirer cannot recover the additional VAT charged.

ADR to become 'business as usual'

Following a two year pilot, HMRC has decided to move alternative dispute resolution (ADR) for small and medium enterprises (SMEs) and individuals into 'business as usual' from 2013-14. This is welcome news as it should help reduce costs for everyone involved in the process. HMRC report that they have had good feedback on the service during the pilot phase and acknowledge that "ADR is a fair and even-handed way of resolving tax disputes between HMRC and its customers".

HMRC will issue more news and detail on ADR over the next few months.

Insurance Services are distinct from leasing services

In a recent Court of Justice of the European Union (CJEU) case a Polish leasing company, BGZ Leasing (B) required its customers to insure the goods which it leased to them, and offered to arrange such insurance. B treated these insurance charges as exempt from VAT. The Polish tax authorities argued that the insurance was ancillary to the principal supply of leasing, and as such was liable to the standard rate of VAT.

B appealed, and the case was referred to the CJEU. The Judge agreed with B that 'the supply of insurance services for a leased item and the supply of the leasing services themselves must, in principle, be regarded as distinct and independent supplies of services for VAT purposes'. Where the lessor 'insures the leased item itself and reinvoices the exact cost of the insurance to the lessee', this is a VAT exempt insurance transaction.

Restriction on occupation = restriction on use

Construction works for dwellings can qualify for zero-rating but one of the conditions is that there is no restriction imposed on separate use and/or disposal of the property. During a recent case, *Brims Construction Ltd,* the appellant quoted the cases of *Phillips* and *Wendels* as supporting their contention that restricted occupancy is not the same as restricted use. HMRC argued that the two cases referred to were decided wrongly (although HMRC had not appealed them) and they were not binding. The Tribunal judge agreed with HMRC that an occupancy restriction did equate to a use restriction and so the works were not capable of being zero-rated.

Tribunal costs

There have been two recent cases where the appellant sought costs from HMRC under the old (1986) Tribunal rules on the basis that the appeals were first lodged prior to the start of the new Tribunal proceedings (1 April 2009). The new rules have much narrower opportunities for costs to be awarded. The outcome of the cases was different and it would seem that costs under the 'old system' will only apply in unusual circumstances.

The first case, *Usha Martin (UK) Ltd*, saw a business appeal against an HMRC assessment in 2006. The case was suspended awaiting the outcome of a European Court case. When that case was finally concluded HMRC withdrew their assessment in January 2012. The appellant sought costs from HMRC under the old rules and the Tribunal ruled that, due to the length of the delay, that the old rules be applied and that the appellant's costs paid by HMRC.

The second case, *Hewlett Packard Limited,* saw the appellant make the claim for costs in May 2012 in respect of an appeal that was lodged in August 2008, with the decision released in November 2010. The Tribunal held there was no reasonable expectation that the costs would be paid as the appellant should have known of the change in the law. The Tribunal went as far to say that the appellant's was "in effect (if not intentionally) in the position of an opportunist".

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