

# Constable VAT Consultancy

## VAT Focus 17 April 2013

### **VAT Groups**

On 9<sup>th</sup> April, the CJEU announced its judgement in the case of the EU Commission v Ireland on the issue of the inclusion of non-taxable persons within VAT Groups.

The Court agreed that non-taxable persons can be included in VAT Groups. This is good news for the UK as the judgement on a similar case against the UK is due to be announced later this month and this is a strong indication that it will be possible to continue to include non-taxable persons in UK VAT groups in the future.

### **Ruling on French Yacht Exemption**

The Court of Justice of the European Union has issued its ruling on the infraction proceedings against France in regards of the French exemptions on certain yacht charters. The Court ruled that the French exemption was not compatible with EU legislation as the French rules did not explicitly make the exemption conditional on the vessels' use for navigation on the high seas.

Although no official English version is yet available and we await the English version of the ruling for greater clarity, this ruling indicates that the days of the expansive French exemption may be drawing to an end. If you have any queries on how this may affect your business, or your clients, please contact us.

### **SDLT claims possible following VAT case**

Revenue & Customs Brief [08/13](#) sets out policy changes in relation to transfers of a going concern (TOGC) following the Tribunal's decision in the *Robinson Family Ltd* case and provides guidance on the adjustment of Stamp Duty Land Tax (SDLT) overpaid. Further information on the case can be read in our [28 November 2012 VAT Focus](#).

### **Penalties Not Applicable**

A solicitor, James Hillis, started a business with the majority of his income from legal aid. He was advised initially that he was unlikely to exceed the VAT registration threshold in the first year. He also mistakenly believed that taxable turnover for VAT registration purposes was calculated at the end of each financial year of the business, rather than a rolling twelve month basis. When he realised his mistake he had exceeded the VAT registration threshold over a year before. His accountant quantified the VAT due as £25,000 and Mr Hillis registered for VAT. HMRC issued a penalty of £4,754 (19% of the £25,000), which was reduced to £2,502 (10%). HMRC said it could not reduce the penalty any further as the unprompted disclosure was more than a year after the VAT registration should have been effected.

The tribunal chairman said that "the penalty regime under schedule 41 is primarily directed at tax payers who deliberately avoid their responsibilities to notify HMRC of their obligation to pay tax. The penalty regime is not intended for tax payers who make a genuine mistake on their liability and disclose their mistake to HMRC." The Tribunal decided that the imposition of a penalty was "contrary to the clear compliance intention of the penalty regime". As such the penalty was reduced to nil. If you or a client have been subject to a penalty through a genuine mistake it may be worth approaching HMRC for a reconsideration of the penalty amount in the light of this case.

### **Appeal Not Out of Time**

After reporting on several cases where the taxpayer was unsuccessful in resurrecting a claim that had been declined by HMRC, we can now report on a case where the taxpayer was successful. The claim related to VAT overdeclared on gaming machines. When HMRC wrote to the taxpayer advising that the claim would not be paid the taxpayer rang their compliance officer to discuss next steps. The taxpayer claimed (and noted on HMRC's letter) that the officer advised that there was no need for further action and if the lead case (Rank) was successful then the taxpayer's claim would also be paid. When it was later pointed out to the taxpayer that this was incorrect they applied for the appeal to be re-instated.

At the Tribunal HMRC submitted that the taxpayer "*provided no reasonable explanation for the failure*" (to appeal HMRC's decision) "*and it was not accepted that HMRC had misinformed the Appellant.*" In view of the fact that the taxpayer called HMRC on the day they received the notification of HMRC's decision and noted the officer's comments on the letter the Tribunal allowed for the appeal to be re-instated.

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**Thinking outside the box**