Constable VAT Consultancy

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Single Exempt Supply

Nuffield Health, a charity providing healthcare, submitted a Fleming claim for over £1m for unrecovered input tax on medicinal supplies (prescribed drugs and prostheses) on the basis that these supplies were separate from the VAT exempt supplies of healthcare. In the VAT periods to which the claim related such supplies were standard rated. HMRC rejected this. Nuffield also put forward a second argument, based on the Talacre Beach Caravan Sales case, that if the supply was a single supply of healthcare it contained a separately identifiable taxable (zero-rated) element to enable the reclaim to be made. The Tribunal saw, in the eyes of the patient, no meaningful separation between the supply of drugs and prostheses and the health treatment and felt such separation would be "wholly artificial". The Tribunal also dismissed the alternative submission as there was no precedent for an element of a non-taxable supply to be treated as taxable.

Market Value

This was a lead case from a motor dealer. The VAT involved in the specific case was £114,000 but £33m was at stake in all the other cases standing behind this lead case. When a part exchange occurred it was common for the value ascribed to the customer's existing car to be greater that the "guide price." The contention of the motor dealer was that this "over allowance" was a discount on the value of the replacement car and not part of the consideration paid for the customer's car. As such, the VAT due on the sale by the dealer should be calculated on the discounted amount. The Tribunal saw no scope to argue that the market value of the customer's car was anything other than the amount agreed by both parties (i.e. including the "over-allowance") so the claim failed.

Penalties

There have been two interesting cases in involving penalties recently. The first, United European Gastroenterology Federation (UEGF) relates to whether a disclosure of error was prompted or unprompted (the latter enabling mitigation of the penalty rate down to 0%).

UEGF was a pan-European organisation that held an annual event in Europe. In 2009 the UK was chosen as a location and UEGF registered for UK VAT to account for the VAT due on the attendance fees (and to recover VAT incurred on relevant costs). It also engaged a third party business to administer the event. This third party issued tax invoices quoting UEGF's name and UK VAT number, for the attendance fees showing UK VAT. It did not inform UEGF of this and UEGF's UK VAT returns did not include this output tax. This resulted in one of the returns being a repayment. HMRC called UEGF's accountant and set a date for a VAT visit to verify the repayment. Prior to the meeting the error was discovered and notified to the UK accountants. The visit was postponed whilst the accountant established the extent of the error. A disclosure was then made for the VAT period identified for the visit and for other VAT periods.

The Tribunal agreed that the taxpayer would have disclosed the error irrespective of whether HMRC had arranged a visit. However, VAT legislation clearly states that any disclosure made after the taxpayer has reason to believe that HMRC are about to discover it is a prompted disclosure. In addition, as the taxpayer did not intend to hold another event in the UK in the near future and was to de-register for UK VAT once the issue of the penalties was settled, the conditions for suspending the penalty were not met. At 15% (the minimum percentage for a prompted disclosure) of the potential lost revenue the penalty was £104,973. During the hearing it emerged that a similar issue had arisen when an event was held in Austria. The penalty imposed by the Austrian authorities was 2%.

In the second case a sole proprietor accountant de-registered for VAT in 1997 but continued to trade. He later exceeded the VAT registration threshold but failed to register and account for VAT (for the years 2005 to 2009). When this came to light a civil evasion penalty was issued by HMRC for 100% of the VAT not declared. Whilst the Tribunal agreed the basis of the penalty it did allow for 20% mitigation in view of the fact that the taxpayer was very elderly (he was in his mid-80s). However the penalty still stood at £97,957.

UK to participate in pilot scheme

Between 1 June and 31 December 2013 the UK is to participate in a pilot scheme to provide "private VAT rulings" in relation to cross-border transactions. The other Member States participating are Belgium, Estonia, Spain, France, Cyprus, Lithuania, Latvia, Malta, Hungary, Netherlands, Portugal and Slovenia. Businesses planning cross-border transactions with one or more of these Member States can request a ruling on the VAT issues; however, the official news release states: "This consultation does not guarantee that a cross-border ruling, agreed by the Member States concerned, can be delivered."

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Thinking outside the box