

# Driving Facts

## VAT news

### Demonstrator Claim Update

The situation with submitted claims remains similar to that outlined in our previous updates. Claims are continuing to work through the system and we will be in contact with you as soon as there is any specific news relating to your particular claim.

Our partners in this exercise, Barnard Atkins Limited, are reporting that some bonus claims are being rejected on grounds which they do not agree with. They are pursuing this with H M Revenue and Customs (HMRC) at policy level, and an appeal will be launched.

### Compound interest / Group Litigation Order

We outlined in the previous edition of VAT News the decision of the High Court in the case of the Group Litigation Order (GLO). Just to recap on the judgement, the Court held that although compound interest is due on overpaid VAT, claimants were out of time to benefit.

In addition to the GLO, some claimants made a parallel claim to the VAT Tribunal. Unfortunately, as affected dealers will know, we have recently had the decision in this action and the Tribunal decided against the claimants. The Tribunal accepted that the payment of compound interest was a requirement of EC law but that it was not able to interpret UK VAT legislation to permit such a payment. This is because the High Court had already ruled that an alternative remedy for taxpayers existed i.e. a claim to the High Court. The Tribunal also decided that claimants were out of time to bring the Tribunal action.

### Appeals

An appeal is currently being lodged against the judgement in the GLO action and we have also applied for leave to appeal against the Tribunal decision. It is hoped that a joint appeal unifying both claim avenues will be permitted.

The appeal in the case of the GLO was due to be heard in January next year, but if the two appeal routes are combined, it is expected that this date will be put back to allow adequate time for preparation.

We are hopeful that ultimately there will be a positive conclusion to the claims for compound interest and we would suggest that dealers who have not yet considered making a claim contact Barnard Atkins Limited for further details.

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If you have any queries regarding how these judgements affect your situation, or how your claim for overpaid VAT is progressing, please telephone your usual contact at Barnard Atkins.

### VAT Rate Change

A topic which is foremost in everyone's mind at the moment is the VAT rate change scheduled for the end of the year. Rumours abound that further rate changes may be in prospect, and it will be interesting to see what news the imminent Pre-Budget Report will bring from a VAT perspective. Unfortunately the ASE company crystal ball does not have a direct link to the Chancellor, so we can only deal with the changes which have already been published. The rest of this newsletter is dedicated to a summary of the main points you need to get to grips with in order to handle the rate increase correctly.

### Transactions not completed before 1 January

The most common issue surrounds deals which straddle the end of the December and the questions of when these can benefit from the 15% VAT rate. There are three ways in which a 15% rate can be secured even if some element of the transaction has to be completed in the new year.

1. Full payment received before the end of December
2. Invoice raised before end of December
3. Vehicle delivered/service performed before end of December.

If a deposit is received before 1 January but the balance settled after this date, you have a choice of treatment. The standard way to handle this is that 15% VAT is applied to the deposit and 17.5% VAT to the balance. The alternative is to use the increased VAT rate on the deposit so that the whole transaction is subject to VAT at 17.5%.

If a service is in progress on 31 December 2009 and no payment has been received or invoice issued prior to this date, you again have a choice. Firstly, you can use a VAT rate of 17.5% for the whole transaction. Alternatively, the work can be split between that which takes place before the end of December and that which is completed after. A rate of 15% will be used for the pre-year end work, and 17.5% for the post year end work.



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### Anti-forestalling legislation

If we are talking about a high value transaction, raising the VAT by 2.5% can amount to a large price increase. HMRC are very aware that customers/suppliers may seek to manipulate the VAT point of a transaction so that it artificially benefits from the 15% VAT rate. In order to counter this, anti-forestalling legislation is in place which would impose a supplementary VAT charge of 2.5% to affected transactions, therefore bringing the total VAT payable back up to 17.5%.

The first point to make about this legislation is that you only need to consider it if your customer is unable to reclaim all of the VAT you charge to them. If your customer is a VAT registered business for example, as long as they do not fall within the partial exemption regime, their transactions should not be subject to the supplementary VAT charge.

The types of transactions that will be caught by the legislation are ones where any of the following apply:

- You receive payments from persons connected to you for future supplies; or
- You issue advance invoices to persons connected to you for future supplies; or
- You provide or arrange funding for your customers to enable them to pay in advance for goods or services to be supplied by you; or
- You issue VAT invoices that do not have to be paid for at least six months; or
- You receive pre-payments or issue advance VAT invoices in excess of £100,000 and this is not commercial practice; or
- You supply rights or options to receive goods and services from you free of charge or at a discount.

The areas where you are most in danger of falling foul of these conditions are transactions involving financing and/or advance invoicing.

If you have a captive finance house, it is likely that this will meet the definition of arranging funding and, depending on your franchise and model range, it also can be surprisingly easy to breach the £100,000 threshold concerning advance invoicing and payments. If a transaction is over £100,000 and you wish to avoid the supplementary VAT charge applying, you must be able to demonstrate that the way the transaction has taken place is normal commercial practice and not just a means of securing a 15% VAT rate.

**If you have any queries on any of the subjects covered in this newsletter or on any other VAT matters please email us at [vat@trevorjones.uk.com](mailto:vat@trevorjones.uk.com) or call our helpline on 0161 493 1930.**

**These articles are of a general nature and specific advice should be obtained before they are acted upon. To subscribe to our Email alerts system please Email us at [alerts@ase-global.com](mailto:alerts@ase-global.com).**

### Effect on used stock

Care must be taken that the rate change does not hit your bottom line by eating into the profit you make on the sale in January of used vehicles which you purchased before the rate change. Unless you increase the selling price of affected vehicles at the end of December to take account of the rate change, you will be paying more over to HMRC as output VAT but not receiving increased income from your customer to compensate for this. This is most easily understood with an example.

Think about a used qualifying vehicle you are selling for £12,000 including VAT. If this vehicle is sold in December, output VAT of £1,565 will be paid over to HMRC. If this vehicle is disposed of in January however, the VAT will increase to £1,787, creating an extra VAT hit of £222. The situation with a non-qualifying vehicle will be similar, but obviously VAT payable will only be based on the profit margin, with more of this margin being paid to HMRC as VAT. The only way to avoid or minimise the effect of this is to either increase selling prices to take account of the VAT change or reduce stock held at 31 December.

### Private use of demonstrators and fuel

Many of you will use the agreed fuel and demonstrator scale charge rates to account for the private use of demonstrator vehicles or fuel. These rates will change to take account of the increase in the standard rate of VAT. The new rates will be published on HMRC's website nearer the year end so you must remember to update your VAT return workings to reflect these.

### DMS systems/manual VAT return workings

Your DMS provider should issue you with details on how to deal with the rate change but also remember to update any spreadsheets etc that perform automatic calculations based on the standard rate of VAT.

### Credit notes

If you issue any credit notes next year in relation to invoices raised when the VAT rate was 15%, the VAT rate needs to match the one used on the original invoice and should therefore be at a rate of 15%.

### Bad debt relief

Finally, if you make a claim for bad debt relief for invoices issued over the last couple of years, do not forget that you will have to base the claim on the actual output VAT you accounted for on each invoice. This could mean that your claim is comprised of some amounts at 15% and some at 17.5%.



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