

Driving Facts

VAT NEWS

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Demonstrator Claim Update

General

As you may have seen from recent press coverage, HM Revenue & Customs (HMRC) have invited motor dealers who have had part (or all) of their claim rejected by HMRC initially, or who did not claim at all back in June 2003, to seek repayments of amounts due in light of the Court of Appeal judgements in the cases of Michael Fleming T/A Bodycraft and Conde Nast Publications Limited.

However, HMRC have subsequently lodged an appeal to the House of Lords in relation to the two relevant cases. It is expected that this appeal will be heard at some point in 2007.

It needs to be noted that any motor dealers wishing to claim their repayments now will have to first sign an undertaking that if HMRC win the cases on appeal in the House of Lords or the European Court of Justice, then the motor dealer will refund the VAT claimed including statutory interest to HMRC within twenty eight days of the final ruling. In addition, they will have to pay further interest to HMRC, which is likely to be at a rate of approximately 7.5%. Consequently, if the 'lead cases' takes several years to finalise (which is possible) then the further interest due to HMRC will be sizeable.

As a result of the above, motor dealers have a choice to either protect their position and wait for the final outcome of the 'lead cases', or to seek repayments of the amounts due immediately knowing that it may be necessary to repay the entire refund received, plus further interest, at some point in the future.

For completeness, it is imperative that all motor dealers that had their claims rejected initially, or who wish to submit new claims, do not destroy any documentation relating to the claim period that may allow you to determine the following:

- Number of demonstrators registered
- Profit margins achieved in respect of demonstrator vehicles
- Demonstrator bonuses paid by the manufacturer

This is because all claims will have to be 'scaled' to reflect the actual circumstances of the business.

If you wish to discuss your specific claim/appeal in further detail then we suggest that you contact our partners in this exercise, Barnard Atkins Limited, for an update on 0161 872 3150.

Compound Interest

Trevor Jones, Chartered Accountants, is in the process of co-ordinating claims against HMRC to recover compound interest on behalf of dealers who have received repayments of overpaid VAT, plus simple statutory interest. If successful, it is possible that the compound interest payments due would be in the region of three to four times greater than the previous simple interest payments received by motor dealers

All motor dealers that have previously expressed an interest in this action are in the process of being contacted with a view to progressing matters, however, it is not too late to contact us if you have previously received a repayment of overpaid VAT and wish to discuss the possibility of submitting a claim to recover further interest.

If you wish to discuss a potential claim to recover compound interest then please contact Barnard Atkins Limited on 0161 872 3150.

Car Hire Insurance

If you run a car hire business, in certain circumstances it is possible to treat the insurance charges passed onto the customer as a disbursement from a VAT point of view. If the charges can be treated as a disbursement, there is no need to account for VAT on the re-charged insurance cost. The following conditions all need to be met for the insurance charge to be treated as a disbursement:

- The customer must have specifically requested that the insurance cover is obtained on his behalf.
- It must be the customers own risk that is insured under the policy and not a block policy where technically the Hire Company is the insured person.
- You must recover only the exact amount of net premium from the customer.
- The amount paid by the customer must be in respect of cover for that customer alone.
- The exact amount of net premium must be separately itemised on any invoice issued by the supplier to the customer.

If one or more of the above conditions is not met then in all likelihood VAT will be due on the value of the insurance passed onto the customer.

Provision of Free Insurance and Breakdown Cover

Ford Motor Company recently appealed to the VAT Tribunal in relation to the supply of free insurance and breakdown cover provided to purchasers of vehicles. It was the view of Ford that the VATable value of the car should be reduced by the cost of the insurance and breakdown cover, given that there were actually two supplies being made to the end customer, the supply of the car and the supply of the insurance.

The Tribunal dismissed the appeal of Ford and ruled that the supply of insurance was merely ancillary to the predominant supply of the car. As a result, the total payment received for the sale of the car attracted VAT at the standard-rate of 17.5%.

Given the money at stake in this case, it is possible that Ford will take this case to the High Court. We will of course update you on any further developments.

Group Structures

We have recently seen several instances of HMRC looking closely at the recharges passing between groups of companies and assessing for VAT that has not been declared on certain of these charges.

Any motor dealer that operates a group structure should carefully review its recharge practices in order to confirm that the correct amount of VAT is declared. It is often possible to structure the group in such a way that VAT on recharges can be reduced.

In addition, in cases where property and overhead expenditure is incurred in one company and recharged to another, Customs are carefully examining the composition of the recharges. If, for example, the cost of capital items is not reflected in some manner in the recharge, they are seeking to argue that the assets are not being put to a taxable business purpose and so no input VAT can be reclaimed on their purchase. This can obviously be a major problem if large amounts of VAT have been reclaimed on the acquisition or refurbishment of capital items.

Does the Capital Goods Scheme Affect you?

Have you purchased or refurbished a building in the last 10 years? Are you partially exempt for VAT purposes? If the answer to both these questions is yes, the capital goods scheme could be relevant to you.

Broadly speaking this scheme applies to the purchase of land and buildings or the refurbishment of an existing building, where input VAT was reclaimed and the VAT exclusive cost was £250,000 or more. It has been recognised that the extent such a building may be used to produce taxable supplies can vary over its lifetime, so there is now a requirement to monitor any changes in use over roughly the first 10 years since you incurred the expenditure. Over this 10 year period an annual adjustment is made to the original amount of VAT claimed to reflect any change in use

This scheme also links into your partial exemption calculations as the percentage used to make any adjustment is your partial

exemption percentage for the year; however, even if your business produces no exempt supplies you may still find that you fall within the rules of the scheme. The reason for this is that you must also consider balancing adjustments if the property is sold within the 10 year period and the sale is exempt. This can lead to an unforeseen additional VAT liability.

There are ways in which costly adjustments can be avoided so please contact us for specific advice if you think this may affect you.

The Two Sides of Bad Debt Relief

Most of you will be aware that VAT relief can be obtained for old debts but are you also aware of the flip side of this relief for the debtor concerned?

Firstly, a reminder of the main conditions for bad debt relief:

- You must have paid over to Customs the output VAT for which you are claiming relief
- You must have written the debt off in your VAT accounts and transferred it to a bad debt account
- You must not have assigned or factored the debt to someone else
- The debt must have been outstanding for 6 months after the later of the date of the supply and the time payment was due
- You must keep a copy of the invoice to which the debt relates and record full details eg customer name, details of any payment received etc in your bad debt account

Under the rules which were in existence before 2003 a notice had to be sent to any customers who were VAT registered stating that you were claiming relief. When this was received by them, they then had to repay their associated input VAT to Customs. As bad debt relief is now automatic subject to meeting the conditions described above, the obligation to repay input VAT is also now automatic.

The implication of this is that if you have any balances on your creditors' ledger which have been outstanding for 6 months after the later of the date of the supply and the due date for payment, you must repay the VAT to Customs.

If you are in dispute with the supplier and they agree to extend the due date for payment, the 6 months run from this revised date.

If you have any queries on any of the subjects covered in this newsletter or on any other VAT matter, please e-mail us at vat@trevorjones.uk.com or call our helpline on 0161 475 4700

These articles are of a general nature and specific advice should be obtained before they are acted upon.