

Driving Facts

VAT NEWS

Demonstrator Claim Update

Compound Interest – Act Now!!

In conjunction with McGrigors Solicitors and Barnard Atkins Limited we are in the process of pursuing a number of claims for compound interest/damages to the High Court. This action follows the repayments received by the motor trade in relation to VAT overpaid on demonstrator sales and demonstrator bonuses, and will seek to identify whether or not motor dealers are entitled to a higher rate of interest than has already been paid by HM Revenue and Customs (HMRC).

It is our understanding that the High Court will shortly order that all of the claims can proceed under the banner of a formal Group Litigation Order ('GLO'). This will be of great benefit as it means that a small number of test-cases will determine the outcome of all of the claims submitted by the participants in the GLO.

There are already a large number of car dealers that have signed up to the GLO, however, there are still many dealers who received repayments of overpaid VAT from HMRC that have not yet protected their position. It is important to act now as a successful claim for compound interest could be as high as four times the initial interest paid by HMRC.

It is also worth noting that any dealers that had their initial demonstrator VAT claims rejected, and are now awaiting the outcome of the relevant lead-cases, will not be precluded from submitting applications for compound interest if their initial claims are ultimately successful. However, due to the status of these claims, they can take this matter to the VAT Tribunal without the need to join the GLO.

If you would like further information in relation to the GLO action then please contact Rob or Steve at Barnard Atkins on 0161 872 3150.

General - Appeals

We can confirm that the House of Lords plans to hear the appeals of HMRC in relation to the cases of Conde Nast Publications Limited and Michael Fleming T/A Bodycraft in November 2007. As affected parties will be aware, these cases will determine the success of the demonstrator VAT claims that have initially been rejected by HMRC (in full or in part).

In the meantime HMRC have given affected motor dealers the option of obtaining the necessary refunds now (but potentially having to repay the amounts awarded back to HMRC if the lead-cases fail)

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or instead waiting until the lead-cases have reached a final conclusion.

If any dealers wish to claim a refund immediately then they should contact our partners in this exercise Barnard Atkins Limited, however, it should be noted that until the lead-cases have reached a final conclusion HMRC has put limited resources into the verification of claims and thus it is likely to take at least six months to achieve a pay-out.

As previously advised, it is imperative that all motor dealers that had their claims initially rejected do not destroy any documentation that shows demonstrator numbers, demonstrator profit margins, or the level of demonstrator bonuses for the period in time prior to 1997/8. This is because all claims are likely to have to be 'scaled' to reflect the actual circumstances of the business.

New Claims

Customs are also inviting claims from all tax payers (including motor dealers) that did not submit a claim prior to 30 June 2003 deadline.

If you have not yet submitted a claim but did trade as a new car dealer prior to December 1996 then we suggest that you contact us to discuss the protective action that can be taken.

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 on 0161 872 3150.

What's your excuse?

If you send your VAT return in late you risk incurring a penalty of up to 15% on the net tax due to HMRC. If a taxpayer has a 'reasonable excuse' for being late however, HMRC are obliged to remove the penalty,

Not having enough money to pay the return or being let down by the person who you rely on to send your returns in on time are NOT reasonable excuses for HMRC, and in the past, holidays or giving birth haven't been reasonable excuses either. Illness, lost records and computer problems are the sort of excuses that are likely to be acceptable to HMRC.

If you are late with your VAT returns don't despair, help is on hand. Just contact our helpline and we'll do what we can to remove or reduce the penalties.

MOT Testing VAT Tribunal Decision

A recent decision of the VAT Tribunal has cast doubt on the historical VAT treatment of MOT fees by HMRC.

The appellant, Duncan Motor Services (DMS), was not an approved garage for the purposes of MOT testing and therefore it bought in the services of an approved MOT testing station. The company invoiced the statutory MOT fee to its customers but received a discount from the approved testing centre. This discount was not shown on the invoice raised to the end customer.

In line with their policy HMRC ruled that the whole of the test-fee passed onto the end customer was subject to VAT at the standard rate of 17.5% as the actual price paid to the test centre by DMS was not specified on the invoice. However, the Tribunal Chairman went against the long-held policy of HMRC and concluded that only the £9 per test retained by DMS should be taxable at the standard rate. It is not known whether HMRC will appeal this decision further but we will keep you updated on any developments in later issues of VAT News.

Holiday Homes

Did you know that owning a UK holiday home may have VAT implications? For VAT purposes if you rent such properties out when you are not using them you will be classed as operating a furnished holiday let business which is standard rated for VAT purposes. You may think that because the level of income received from the property is relatively low there will still be no VAT impact because you are below the registration threshold, however, Customs look at what is known as the "taxable person" when considering the obligation to register and charge VAT, not an individual business. What this means in practice is if you run your main VAT registered business as a sole trader or partnership and the same persons involved in the first business purchase a property together, any rents received must be subject to VAT at 17.5%. In this case HMRC consider that the same taxable person is running both businesses.

Purchasing a property abroad will not necessarily avoid a VAT problem. Supplies in connection with property are classed as taking place where the property is located. If your property is in the EC, although any rents received will not be aggregated with the turnover from your UK business, it could still be subject to VAT in that country and territories outside the EC may also have an equivalent indirect tax. This is because although the UK has a relatively high

registration threshold, many other countries have registration limits of nil, in other words as soon as you generate standard rated income you should register. You may therefore find out that you have an obligation to register for the equivalent of VAT overseas and failure to do so may lead to penalties.

If you are considering purchasing a holiday home in the UK or overseas and intend to rent it out when not in use, advice should be obtained on the likely indirect tax implications. In addition, it is important not to ignore the direct tax effects which we outlined in the last edition of Tax News.

Maximising your Options

In the last issue of VAT News we looked at what an Option to Tax was and how to find out if there is an existing election in place on a property. In this article we start to examine the main reasons why an election may be desirable from a VAT planning perspective by considering the effect of exempt income on a business' partial exemption status.

As noted in our previous article, most supplies made in connection with property are exempt from VAT except where the property is under 3 years old. This includes both rents received and the final sale of the property.

A business in receipt of such income would be classed as partially exempt for VAT purposes. If you are partially exempt it means that the amount of input VAT you are able to reclaim on your purchases may be restricted if some of it relates to the generation of those exempt supplies. This inability to recover all VAT can represent a substantial cost to your business.

Subject to some additional rules, input VAT directly attributable to exempt supplies is not recoverable and input VAT on overheads must be apportioned between that which is deemed to relate to taxable supplies and that which relates to exempt income. As the standard method for calculating the amount of irrecoverable VAT is based on the level of your taxable supplies as compared to your total supplies, it is important to minimise the level of exempt income your business receives in order to ensure this percentage is as high as possible. If you are in receipt of a large amount of rental income or are about to sell a property, opting to tax can avoid or minimise the restriction on input VAT recovery by turning your exempt income into a standard rated receipt.

In our next newsletter we will look at the Capital Goods Scheme and how opting to tax can avoid a clawback of VAT already reclaimed.

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 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.