

Driving Facts

VAT NEWS

Demonstrator Claim Update

Compound Interest – Act Now!!

Further to our recent letters, the High Court has now published a Group Litigation Order ('GLO') following an application by our partners in this exercise, McGrigors Solicitors. To re-cap, the GLO follows the repayments received by the motor trade in respect of VAT overpaid on demonstrator sales and demonstrator bonuses, and will seek to identify whether or not the motor dealers are entitled to a higher rate of interest than has already been paid by HM Revenue and Customs (HMRC).

We are in the process of selecting a lead-claimant with McGrigors and HMRC, and we hope that a full hearing in respect of this matter will take place at some point in 2008. There are already a large number of car dealers that have signed up to the GLO, however, there are still many dealers that 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 hopefully not be precluded from submitting claims for compound interest if their initial claims are ultimately successful. Indeed, we are in the process of discussing these claims with Counsel and we will contact the affected clients shortly in order to set out their options.

New Claims

Customs are also inviting claims from all tax payers that did not submit a claim prior to the 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. Our fees for acting on your behalf in this matter are on a success only basis – therefore there is no material cost to the business in ascertaining whether a claim is valid.

General - Appeals

As has been advised previously, the House of Lords plan 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 has given affected dealers the option

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of obtaining the relevant repayment now, with the proviso that this money will have to be returned plus substantial interest if HMRC ultimately succeed, or awaiting the decision in the two lead-cases. If you chose to claim the repayment at this time, then it appears that HMRC are finally getting round to verifying the claims that were re-submitted. A number of dealers have been contacted directly by HMRC in order to arrange visits to verify the claims. If such an approach is received by your business then we urge you to call your usual contact at Barnard Atkins immediately.

Another MOT Testing VAT Tribunal Decision

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

The appellant, Martin Jamieson Motor repairs (MJMR), was not an approved garage for the purposes of MOT testing and therefore bought in the services of two local approved MOT testing stations. The business invoiced the statutory MOT fee (£45) to its customers but received a discount from both approved testing centres of £9 or £13. The business accounted for VAT on the 'handling charge'. The business had a sign in the reception area outlining that a "small handling fee (inc VAT) is added to the trade discounted MOT fee".

As in the previously reported case of Duncan Motor Services, the Tribunal Chairman went against HMRC's current policy and concluded that only the retained handling fee per test retained by MJMR should be taxed at the standard rate. It is not known whether HMRC will appeal this decision further.

Avoiding Clawbacks

In previous editions of VAT News we have outlined how Options to Tax operate in relation to commercial property and explored how these can impact on the partial exemption rules. In this issue we turn our attention to the Capital Goods Scheme. This scheme can result in nasty surprises in the form of an unexpected VAT payment for the unwary. As property is usually of a high value, these payments can often be substantial and have a detrimental effect on both cashflow and profits. If advice is taken prior to undertaking a property transaction, it is sometimes possible to avoid this clawback. So how does the scheme operate?

If a building cost over £250,000 or this amount was spent on it for refurbishments it could fall within the Capital Goods Scheme regulations. Under these rules, where input VAT has been claimed under these circumstances, the use of the building must be monitored over a period of 10 years. If in this period the building is used other than for the purpose of generating taxable supplies, a clawback of some or all of the original input VAT claimed will occur.

A clawback will take place, for example, in each year a property is let to a tenant under a VAT exempt lease. In addition, a final clawback will be made on any sale of the property within the 10 year period as, if the building is sold as exempt for VAT, it is classed as being used for an exempt purpose for the remainder of the 10 year period.

The Capital Goods Scheme interacts with the partial exemption rules as the percentages used for the annual adjustments are derived from those calculations. As you may recall from our last article, under these rules it is possible to maximise the amount of input VAT a business can reclaim by turning any exempt income derived from a property into standard rated income by opting to tax the property. The Capital Goods Scheme clawback can be avoided in a similar way, as it too is based on what sort of supplies, i.e. taxable or exempt, the property is being used to generate.

Something we hope this series of articles has reinforced, is that whenever you are thinking of undertaking a property transaction it is vitally important that you obtain advice concerning its VAT implications as far in advance as possible. Early planning can ensure that the amount of VAT your business can reclaim is maximised and therefore that the money ends up in your bank account rather than HMRC's!

Sales to Disabled Customers - A Reminder

Further to our recent mailing, we thought that it was important to remind you of some of the conditions surrounding the provisions for zero-rating sales of adapted cars to disabled customers.

Firstly, the car should be being purchased for personal use. If however, the person uses the vehicle in a work capacity, it will still qualify as long as this is incidental to the main use as a private vehicle.

The customer must make a declaration that they are "chronically sick or disabled" and that the vehicle is for private use only. The declaration should be kept with

your VAT records along with the sales invoice.

The vehicle itself must satisfy certain criteria. It must be:

- designed or substantially and permanently adapted for the carriage of a disabled person in a wheelchair or stretcher; or
- designed or substantially and permanently adapted to enable a disabled person, who usually uses a wheelchair or is carried on a stretcher, to enter, and drive or otherwise be carried in, the motor vehicle.

An adaptation is regarded as permanent if it can be used for as long as the individual requires it, normally this means that it is welded or bolted on to the vehicle.

To qualify as substantial, the modifications should allow the person to use a vehicle which they could not use without the adaptation being in place. The vehicle will qualify as 'adapted' if it is altered to meet the specific needs of the user where the adaptation:

- allows him to enter and travel in the vehicle whilst seated in the wheelchair/stretcher, or;
- allows him to enter, travel in or leave the vehicle, or;
- enables him to drive the vehicle, or;
- allows a wheelchair to be carried on, or in, the vehicle.

The car must be sold in a modified state by you in order to qualify for the scheme - you cannot sell an unmodified car which is then modified at a later date, even if the modifications take place on your premises. Some dealers subcontract this type of work but the modifications are still invoiced by them. Examples of adaptations include hoists, swivel seats or spinner devices.

As it is up to the dealer to decide whether zero-rating will apply, it is vitally important that you ensure that you keep full records of the transactions to avoid doubt over the liability of the supply at a later date. If you have "repeat purchasers" you must ask more questions at the time of the repeat purchases to avoid HMRC mounting the argument that you should have known that the customer wasn't using the car for personal use and was instead trading in the vehicles that they were purchasing.

Dishonest applicants often rely on the fact that this is a sensitive area to discuss, but it must be remembered that ultimately it will be the genuine customer who could suffer because of their actions.

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.