

Driving Facts

VAT NEWS

Demonstrator Claim Update

Breaking News!! Door Opened for New Claims

HM Revenue & Customs (HMRC) have now published a Business Brief which will allow new demonstrator VAT claims to be submitted. If you have not yet submitted a claim or signed up with us already but did trade as a new car dealer prior to December 1996 then we advise that you contact us to discuss the action that can now be taken.

The Business Brief is HMRC's interpretation of the judgements in the appeals of Michael Fleming T/A Bodycraft and Conde Nast Publications Limited. These appeals have been decided in favour of the taxpayers by the House of Lords and determine the success of the demonstrator VAT claims that have initially been rejected in full or in part by HM Revenue & Customs (HMRC).

HMRC's guidance in light of this judgement confirms that any claim that was initially rejected on the grounds that the business could not prove that it would have made a claim in 1997 should now have to be paid. In addition, many of the claims that were rejected in part will also now have to be revisited.

Our colleagues at Barnard Atkins Limited are presently writing to HMRC in respect of rejected claims. However, HM Revenue & Customs now require that all the relevant dealerships must complete an 'authorising your agent' form. Barnard Atkins Limited will forward a copy of the form to each dealership shortly with a copy of the submitted claim.

It is imperative that all motor dealers that had their claims initially rejected do not destroy any documentation in respect of their fleet of demonstrator vehicles including documents that show 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 and this information will enable the prompt payment of the claim.

Compound Interest – Act Now!!

As you will be aware from our previous newsletters, 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 will seek to identify whether or not motor dealers are entitled to a higher

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rate of interest than has already been paid by HMRC.

There are already a large number of car dealers that have signed up to this action; 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 that may now be due to receive repayments from HMRC, will not be precluded from submitting claims for compound interest.

Following the successful pay-out of your VAT claim, we will endeavour to contact you on an individual basis in relation to compound interest. However, if you would like further information in relation to the likely costs/benefits of the GLO action in the meantime, or wish to sign up to the GLO immediately, then please contact Rob or Steve at Barnard Atkins on 0161 872 3150.

VAT Spring-Clean?

Once again, as the partial exemption year-end is fast approaching, now would appear to be a good time to review your VAT systems in order to ensure compliance, and spot any opportunities for savings that may be available. We offer a health-check service that will review the systems that you have in place, with a view to confirming that the complex VAT legislation that governs the motor trade is being complied with.

To request a 'health-check', or for further information on the services we can provide your business, please contact us on 0161 475 4700.

Car Hire Businesses – VAT rebates possible?

We have recently had success claiming back VAT that car hire businesses have declared in relation to the insurance element of hire charges. The type of insurance policy that the business holds will determine whether or not a potential claim is possible, therefore, we urge any businesses involved in the hire of cars to contact us to discuss this issue in further detail.

Disabled Customers – Another Reminder!

In the last issue of VAT News we outlined the conditions concerning zero-rating of transactions with disabled customers. It would appear that the rules are still causing confusion leading to errors in treatment which could result in large VAT assessments should you ever be subject to an inspection visit. In this article we concentrate on the main areas where errors occur.

Adaptation not invoiced to dealership

One of the key ideas behind the zero-rating provisions is that the dealer is selling an adapted vehicle to the customer. It does not matter if the dealer makes the adaptations himself or whether a third party undertakes the work, but zero-rating cannot apply if the customer purchases the vehicle in an unmodified form.

No declaration received from customer

The customer should sign a declaration which includes details of the disability/illness that qualifies them for zero-rating. If you find yourself in the situation where HMRC are querying a transaction for which you do not hold such a declaration, it is usually possible to agree to contact the customer to obtain a backdated declaration. However it is always good practice to obtain a declaration at the point of sale.

Modification not adequately substantial

The types of modifications which can qualify the vehicle for zero-rating are only explained in broad terms within the regulations. This allows some flexibility of approach as each person's needs are different but also unfortunately means that there is a greater potential for incorrect treatment as what qualifies as substantial can be somewhat subjective. Generally, factory fitted accessories like running boards will not permit zero-rating of the vehicle.

Multiple sales to same customer

This is a major problem area. Vehicles must be supplied for the personal use of the disabled person. If more than one vehicle is sold to the same customer within a short period of time, without, for example, a trade in of the original vehicle taking place, there is the implication that the second vehicle is not being supplied for personal use. HMRC are now taking a very hard line on this issue and implying that if more than one vehicle is supplied to the same customer within six months, the second vehicle will not qualify for zero rating.

In conclusion, zero-rating sales to disabled customers must be handled carefully and evidence obtained for the reasons behind the treatment.

Business Promotion or Self Promotion?

Most businesses undertake promotional activities. In some cases this simply takes the form of a launch event for a new vehicle but sometimes it is more substantial and involves participation in or sponsorship of a sporting event such as rallying. In these cases, HMRC are almost certain to try and argue that at least some element of the associated input VAT has not been incurred for business purposes. If the event is one in which you have a personal interest, such as you or a member of your family competes in it, they will be even keener to pursue non-business treatment.

If you take customers or suppliers to the event, input VAT recovery may still be blocked under the business entertainment provisions.

So what approach could Customs take to sponsorship expenses?

Firstly, they will want to know if you or a member of your family takes part in the activity. The inference here is that your business is funding your hobby or that of your relative rather than undertaking the funding for true business reasons. They will also look at whether there is a connection between the sport and your business. Sponsorship of rallying is likely to be more appropriate for a car dealer than sponsorship of horse racing for example.

Importance will be placed on the type of exposure the sponsorship gives to the business. Are the people who follow the sport the target customers of your business whether in type or location or is the audience unlikely to purchase goods or services from you? Is the sponsorship an integral part of your overall advertising strategy so that it is mentioned on general adverts etc for your business? Are there clear advertisements for your business at the event, for example, does the rally car's livery include your corporate details?

These are just a taster of the questions that HMRC may ask and many other factors will be taken into account when assessing whether input VAT recovery will be allowed as each situation is unique. If the transactions are queried, it will be the case of mounting an overall argument for the business nature of the expenditure. Such negotiations can become very involved and if you are incurring a large amount of input VAT we often recommend obtaining a ruling from Customs before the sponsorship is undertaken to ensure deductibility. We can assist you with both these areas so please contact us for further advice.

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.