

Driving Facts

VAT NEWS

Demonstrator Claim Update

Existing Claims Move Forward

We are pleased to report that HMRC are now dealing with motor dealers' claims that were initially rejected either in full or in part. Barnard Atkins Limited have confirmed that all such claims have now been re-sent to Customs to be processed and they will contact you shortly to discuss your claim in light of any response from Customs.

It is understood that HMRC have now allocated additional resources to review the outstanding claims and they believe that most cases will be provisionally looked at this year. In addition, they say that most dealers should expect to receive their VAT repayments during 2008/early 2009.

Remember : do not destroy any documentation you may still hold for the period covered by your claim as claims may have to be 'scaled' to reflect the actual profit margins and bonuses that the dealership received.

New Claims

Customs are still inviting claims from dealers that did not submit a claim prior to the 30 June 2003 deadline. If you traded as a motor dealer between 1973 and 1996 and either did not submit a claim originally or only submitted a claim for the capped three year period contact us now to see if you may be able to benefit.

In addition, if you can recommend any of your fellow motor dealers or contacts that have not, as of yet, submitted a claim we will pay a referral fee for all successful leads.

Compound Interest

The Compound Interest Group Litigation Order (GLO) has been listed to be heard in the High Court during February 2009. We have already submitted a large number of claims to the Court and also protective claims for businesses waiting to be paid out by Customs, however, interested parties can still sign up.

All successful motor dealers that received a VAT refund in relation to their demonstrator vehicle fleet are entitled to join the GLO and it is possible to submit a parallel claim via the VAT Tribunal.

If you would like further information on any of these issues please contact Barnard Atkins Limited, on 0161 872 3150.

Issue 37
August 2008

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Option to Tax – All Change

A commercial property can generate two main types of cash inflow – ongoing rental income or proceeds from the sale of its freehold. Both types of income are normally exempt from VAT and this can have a detrimental effect on the ability of the business to recover input VAT.

Firstly, the receipt of exempt rental income can impact on a business' partial exemption status which can restrict the amount of VAT it can reclaim on overheads. Secondly, the sale of a VAT exempt freehold can trigger a clawback of VAT already reclaimed on the property under the Capital Goods Scheme rules.

For these reasons the decision is sometimes taken to apply for what is called an Option to Tax. The Option to Tax is basically an administrative procedure whereby you inform HMRC that you wish to treat the normally exempt supply of the property as subject to VAT at the standard rate.

The Option to Tax procedures have been in existence for a number of years but the rules were updated in the March 2008 Budget, with the amendments having effect from 1 June 2008. It would be impractical for us to examine all the details in this newsletter but the following are the changes that are most likely to affect you.

Rules re revocation – Occasionally a taxpayer's circumstances change and you may need to revisit your decision about the election. The initial cooling off period for revoking an Option has now been extended from three to six months. If you do wish to take advantage of this, you must apply to HMRC for permission to revoke the election.

An election can also be revoked once 20 years have elapsed, however until the new regulations were enacted, no-one knew how to do it! A new form has been introduced for this purpose.

Ceasing to hold an interest in the property – under the old rules, any election you made in respect of a property still stood even if you sold it and reacquired it at a later date. Now, any Option to Tax is automatically revoked where no interest is held in the property for six years.

Scope of option – the old rules also contained some quirky clauses relating to what happened if a building was demolished or was newly constructed. The new regulations take a more sensible approach to this. For elections made from 1 June 2008 an election made on a building will still cover the land on which it stands even if the building is later demolished. In addition, the Option to Tax will apply to any new building constructed on the site.

If an election is made on land rather than a building, the election will automatically include any building which is constructed on it however you do have the ability to exclude the new building if you wish.

Correction of Errors – The New Rules

Whilst mistakes in relation to your VAT affairs are hopefully rare, it is important that you are aware of some recent changes to the limits for disclosing errors and the wider implications of taking advantage of these new limits.

Until recently, if a business made an error on its VAT returns and this error was £2,000 or over, a separate voluntary disclosure had to be made to HMRC. If the error was under this amount, it could simply be corrected on your next VAT return.

There was a lot of discussion that the £2,000 limit was too low for the majority of businesses and so for VAT periods beginning on or after 1 July 2008, the limit has been increased to the higher of:

- £10,000; or
- 1% of turnover (subject to a maximum amount of £50,000).

In this context, turnover is calculated by multiplying the turnover shown on the VAT return for the quarter in which the error is discovered by four.

The increased limit however is not necessarily something that you may wish to take advantage of. Firstly, if you have overpaid VAT, submitting a voluntary disclosure could speed up the time in which you receive your repayment compared to simply putting the error on your next return.

In addition, the need to make a voluntary disclosure should be reviewed in the context of a new penalty regime that took effect for return periods beginning on or after 1 April 2008. Under this regime, errors which have resulted from the taxpayer not taking reasonable

care with their tax affairs can be subject to penalties of up to 100%. These penalties can be mitigated if HMRC are promptly told about the error but correcting it on your next return does not fall within the definition of "telling". For this reason, if you have discovered an error it is advisable that you contact us for advice on whether a voluntary disclosure should still be considered.

Insurance Repair Work

The VAT treatment of insurance repair work can be very confusing as the invoicing procedures depend on the VAT status of the person who owns the damaged vehicle. If the vehicle is owned by a VAT registered business, two invoices will be raised, a VAT only invoice to the owner of the vehicle and an invoice net of VAT to the insurance company.

If the owner of the vehicle is not VAT registered however, the cost of the repair and its associated VAT should be invoiced to the insurance company.

Where an excess is involved, this should be treated as VAT inclusive and invoiced to the owner of the vehicle as normal.

Subcontracted MOT's – Another Victory for the Taxpayer

Yet another Tribunal decision has cast doubt on HMRC's current policy regarding the VAT treatment of subcontracted MOT's where the MOT is recharged to the end customer at a profit.

As you may recall, unless the profit element is shown separately on the invoice to the customer, the whole MOT fee should be subject to VAT. If the profit element is shown separately, e.g. described as an administration fee, VAT is only charged on the profit.

In the case of Denton Auto Repairs the invoice only showed the MOT fee as a total amount and it was not stated anywhere that the MOT work was subcontracted. In spite of this, HMRC lost their case and it was judged that no VAT was due on the recharged MOT proportion of the fee to the customer.

This case represents another defeat for HMRC and it would seem likely that a change in their guidance must soon result. We will keep you informed of the latest developments in this area in later editions of VAT News.

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.