



ADDING VALUE THROUGH THE PLUS FACTOR

VAT Newsletter April 2011



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SIMPLIFIED PARTIAL EXEMPTION METHODS

If your business makes exempt supplies, it is likely you will be due to undertake a partial exemption annual calculation. This is therefore a good time to remind readers of the changes HMRC introduced in 2009 and 2010 to simplify the partial exemption rules. Making full use of these changes may enable you to reduce the time spent on partial exemption calculations and may also achieve VAT savings.

The changes are summarised below:

- ⊕ The new "in-year provisional recovery rate" rule allows a business to use its previous year's partial exemption recovery percentage to determine the amount of VAT that can be recovered in each VAT period. This saves the need for a full quarterly calculation. A single calculation is undertaken at the year end based on the actual year figures to make any necessary adjustments.
- ⊕ The "early annual adjustment" rule allows a business to bring forward its annual adjustment calculation to the last VAT return of its partial exemption tax year. Using this rule allows businesses to claim back any exempt input tax restricted during the year up to four months earlier. In practical terms you would consider this option if the adjustment is in your favour. Otherwise you can stick to the normal rule of making the adjustment in the period following the tax year end.
- ⊕ The "annual test" allows a business that was 'de minimis' in its previous partial exemption year to treat itself as 'de minimis' in its current year. This means that no VAT apportionment is necessary in each period with just a single annual calculation required at the tax year end. This may save a considerable amount of administration time.
- ⊕ The "simplified tests" allow a business to confirm whether it falls below the 'de minimis' limits using two alternative simplified calculations. If either of these tests are satisfied, the business can automatically be treated as falling below the 'de minimis' limit without the need for a full calculation.

HMRC's further guidance can be located on VAT Information Sheets [04/09](#) and [04/10](#).

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REGISTRATION FOR DOCTORS & MEDICS

HMRC have issued VAT Information Sheet [05/11](#) setting out VAT advice for doctors in Scotland who dispense drugs under prescription. Changes effective from 1 July 2011 will mean doctors may need to register for VAT as a result of supplying drugs under prescription.

Not all doctors will be required to VAT register, e.g. if they fall below the VAT registration threshold. However, registering for VAT on a voluntary basis will allow doctors to reduce their costs by reclaiming VAT on the drugs they prescribe.

This issue is driven by the changes to funding arrangements in Scotland for doctors supplying prescription drugs. VAT registration will probably be favourable, if not mandatory, in the vast majority of cases.

Once registered for VAT, doctors will need to consider partial exemption and this may involve the use of a special method in order to maximise VAT recovery. It is strongly advised that affected doctors and practices review the impact of VAT registration in advance of the changes in order to be fully prepared.

We can assist with all the above matters should you have any queries.

ADVISORY FUEL RATES FROM 1 MARCH 2011

Following recent hikes in road fuel prices, HMRC have announced an increase in the advisory fuel rates. These can be used for calculating recoverable VAT, i.e. on the fuel element of business mileage allowances.

Engine size	Petrol	Diesel	LPG
1400cc or less	14p	13p	10p
1401cc to 2000cc	16p	13p	12p
Over 2000cc	23p	16p	17p

VAT Fuel Scale Charges

The VAT fuel scale charges for taxing private use of road fuel have been updated to reflect changes in fuel prices, with effect from 1 May 2011. Businesses must use these new VAT fuel scale charges from the start of their next prescribed accounting period beginning on or after 1 May 2011.

See pages 4-6 of [VAT Notes 1 2011 Budget Supplement](#) for detailed table of road scale fuel charges from 1 May 2011.



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VAT CLAIMS FOR HOT TAKE AWAY FOOD

Readers may already have seen the AAB alert on this subject which was distributed earlier this month - [see AAB hot take away alert](#). HMRC have since issued [Revenue & Customs Brief 19/11](#) stating that they do not consider the European Court judgement has any relevance for the UK VAT. Our view, however, is that the matter is still very much 'live' and we are discussing potential claims with our clients and contacts.

HMRC's position is that UK law is different from the German VAT legal point in the European Court case and that, for complex legal reasons, that difference is allowed within the framework of European VAT law. That may be correct in principle but the case still begs the question as to whether it is right to say under UK law that hot take away food is provided "in the course of catering". If it is not then one possible outcome is that it should always have been zero-rated in the same way as sales of food items, e.g. from a supermarket, hence claims for overpaid VAT would be in order.

It is doubtless going to require a 'lead' case to come before the Tax Tribunal to establish whether the arguments against HMRC will succeed. Any decision from the Tribunal may well end up back in the European Court before a final decision is handed down so the matter could take years to determine.

As mentioned in our Alert, submitting protective claims at this stage will preserve the right to a refund which would otherwise be lost in the future due to the four year limit applicable to such claims.

BAD DEBT RELIEF CLAIMS

There is a potential opportunity for businesses to reclaim VAT on bad debts for the period 1978 - 1997. This arises from an earlier Tax Tribunal case which is now progressing through the courts.

General Motors Acceptance Corporation (GMAC) previously argued successfully that it was entitled to reclaim VAT previously paid on sales for which they were never paid. The normal Bad Debt Relief rules within the VAT law allow for these claims but the Tribunal agreed with GMAC that the conditions for reclaiming Bad Debt Relief between 1978 and 1997 were unreasonably onerous so were out of step with EC law. See [case transcript](#).

Significantly, the Tax Tribunal ruled that the normal cap on VAT claims could not apply to the Bad Debt Relief claims made by GMAC for the period 1978 - 1997. In principle, this means that any business (other than one using the Cash Accounting Scheme) which had bad debts during this period could consider submitting a claim for VAT previously unclaimed under the Bad Debt Relief rules.

HMRC's appeal is due to be heard by the Upper Tribunal after their request for a direct referral to the European Court was refused so it will likely take some time for a result to be delivered. In the meantime our advice is to review potential claims and seek advice if you are unsure.



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CAPITAL GOODS SCHEME CHANGES

From 1 January 2011, HMRC has made significant changes to the way the Capital Goods Scheme (CGS) operates. This will have an impact on any businesses or organisations which make non-business use of assets within the CGS.

Pre 1 January 2011, the CGS required businesses which paid VAT on certain capital assets costing £250,000 or more to review their initial claim to VAT over a longer period. If the extent to which the asset was used for making taxable supplies varied during this period then an adjustment was required based on the amount of VAT originally claimed when the asset was acquired. The assets affected were:

- Computer equipment costing £50,000 or more - longer period 5 years
- Land on which VAT was paid costing £250,000 or more - longer period 10 years
- Buildings which were purchased, constructed, refurbished or extended by more than 10% at a cost of £250,000 or more, again where VAT was paid - longer period 10 years

From 1 January 2011, the scope of the CGS has been extended to include planes and boats/ships which cost £50,000 or more. The longer period for these assets is 5 years.

The other major change is that from 1 January 2011, non-business use of CGS assets will start to trigger VAT adjustments under the CGS. At the same time, the Lennartz method - previously applied to non-business use - has been withdrawn for all assets other than where these are put to a mixture of taxable and private/personal use. In all cases, Lennartz can no longer be used for planes and boats/ships.

If all this leaves you bemused, it is not surprising as the changes involve major alterations to the law and HMRC's [Information Sheet](#) is 21 pages long! If you need clarification on any points or whether you are affected, please contact us for further details.



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