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VAT Newsletter August 2011

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BAA LOSES FIGHT FOR VAT ON DEAL COSTS

The Upper Tribunal has found against BAA and denied recovery of VAT on the costs it incurred in Ferrovial's acquisition of the group in 2006. [See case transcript.](#) This reverses the earlier decision of the First Tier Tribunal which found in BAA's favour. Whilst the result is bad news for BAA, the decision has brought greater clarity to the way in which transaction costs should be treated. Our view is businesses now have an opportunity to increase VAT recovery on such costs or to revisit the past where VAT recovery has been denied.

The background is that Ferrovial's acquisition company, ADIL, incurred VAT on professional fees in the course of acquiring the BAA group and sought to recover this VAT after joining BAA's VAT group. The Upper Tribunal helpfully found that ADIL was engaging in an 'economic activity' but went on to say that it could not rely upon the VATable turnover of the companies within the VAT group in order to recover VAT it had paid on these fees.

The decision appears to have been very fact specific and to a large degree the conclusion of the Upper Tribunal seems to be based on the timing of events. In particular, it focused on the lack of evidence of an intention for ADIL to join BAA's VAT group as a principal reason why it could not link VAT it paid on the fees with the taxable turnover of the VAT group.

The decision, in our view, provides businesses with an opportunity to review costs relating to acquisitions and similar transactions to identify further amounts of VAT which could now be reclaimed. HMRC are likely to look closely at claims so it will be important to review the facts of each case in detail to avoid over claiming.

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VAT ON GREEN FEES

The Tribunal delivered its judgement on 1 June 2011 in the case of Bridport and West Dorset Golf Club. [See Case Transcript](#). The Tribunal allowed the Club's appeal and agreed that the VAT exemption should not be limited to members' playing fees but should also apply to visitor income i.e. green fees generated by the Club.

The background is that playing fees charged to members by certain non-profit making clubs are exempt from VAT. The decision in this case confirms that UK law is too restrictive and that VAT exemption should apply to all playing fees charged by such bodies.

In light of this result, golf clubs should be considering whether they have overpaid VAT on green fees in the last four years and whether a claim to HMRC would be appropriate. All claims would need to take into account the effect of treating visitor income as exempt from VAT as this will have a bearing on the VAT reclaimed on costs in the same period.

The decision may also be of benefit to any non-profit making sports club with non-member income.

HMRC may appeal the decision so clubs should continue to account for VAT on visitor income in the meantime. However submitting a claim at this stage will preserve the right to a refund if the end result is a defeat for HMRC.

PROPOSED CHANGES TO 'DESIGN AND BUILD' CONTRACTS

HMRC have drafted changes to the VAT treatment of construction services provided under 'Design and Build' arrangements. This they say would be the case even if the construction work under the contract is zero rated, e.g. new house builds. Under the proposed changes, on this element, the design work will have to be separately identified and VAT charged at standard rate. If implemented, the change will substantially increase project costs of any businesses unable to recover the VAT on these services, for example residential investment property businesses.

Currently a business can engage a main contractor to carry out both the design and construction work of a project, in these instances the main contractor arranges and pays for all design work and is able to recover the VAT on costs. These costs are then zero rated as part of the overall cost when charged to the business.

HMRC say the move is prompted by the Talacre Beach Caravan Sales case which concerned the supply of furnishings (standard rated) along with a residential caravan (zero rated). [See case transcript](#). However, fierce resistance is being mounted to the charge which appears to be HMRC engaging in 'artificial supply-splitting' which, in other cases, they argue is unacceptable.



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VAT AND TEMPORARY STAFF

The First Tier tribunal has ruled in favour of Reed Employment Ltd in an appeal regarding the VAT treatment of temporary staff. [See case transcript.](#) The Tribunal decided that VAT should only be charged on the commission fee element of Reed's charge to its clients and not, as HMRC wanted, on the whole charge which included wages and associated NIC.

Businesses and organisations which use temporary staff and which cannot recover all the VAT they pay on costs should consider contacting the employment agencies they use to discuss the possibility of using this decision to obtain a VAT refund. Even though Reed had not made a distinction between the elements of the charge on its invoices the Tribunal held, after reviewing contracts and advertising literature, that VAT was only due on the commission element and therefore agreed that Reed had overpaid VAT.

HMRC's policy (taking into account the withdrawal of the Staff Hire Concession on 1 April 2009) is that the whole amount charged for commission and wages/NIC elements is treated as consideration for the supply of staff and VAT should be charged on the total value.

We understand that HMRC is not appealing the Tribunal's decision but we will have to wait and see whether their general policy in this area changes. In the meantime, please contact us if you would like further information or assistance.

VAT TREATMENT OF COMMERCIAL WASTE COLLECTIONS SERVICES PROVIDED BY LOCAL AUTHORITIES

HMRC had undertaken a review of the VAT treatment of local authority waste collection services. Their review has led to the conclusion that these services should be treated as outside the scope of UK VAT. However, waste collection services have been charged previously to VAT at the standard rate.

Therefore there is a potential opportunity for businesses with charitable/welfare activities, or any other business that cannot recover VAT in full to request a potential refund from local authorities overcharged in the last 4 years.

Please contact us if you would like further information to assistance with the process of approaching the local authority to obtain a refund.

HMRC TARGET 'VAT CHEATS'

HMRC have announced that they are stepping up their search to identify businesses which they believe may be evading VAT payments. [\(See HMRC campaign information.\)](#)



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HMRC say they will be using a range of search techniques including internet software to target specified people and companies who may not be declaring accurate income information and where there is a high risk of VAT being 'lost'.

This is being seen as an extension to the 'Plumbers Scheme' which HMRC say was successful in targeting certain trades where cash payments have traditionally been common. It is estimated that as more than £600m has been recovered to date as a result of this initiative.

HMRC have said they will be targeting VAT rule-breakers who have been trading above the current threshold without VAT registering. This will be launched in the summer of 2011 and the campaign will later be extended to focus on other areas, which will include those providing private tuition and coaching, those who are using e-marketplaces to buy and sell goods as a trader, and further groups of trades people.



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