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## When are subscriptions not subject to VAT?

An intriguing decision has been handed down by the Tax Tribunal in relation to a chain of sports clubs. The Tribunal decided that payments received by *Esporta* from members who had defaulted on their membership dues were not subject to VAT.

The background is that *Esporta* operated a sports club membership scheme. Members paid subscriptions which allowed them access to their chosen club to use the facilities. Where members failed to make the regular (monthly) payments of their membership fees, their access rights would be suspended. Defaulting members would in certain cases be referred to a debt collection agency that would pursue the debt on *Esporta's* behalf.

*Esporta* successfully argued that any money recovered by the debt collection agency was not consideration for a VATable sale. The main reason for this is that the defaulting member did not receive any VATable supplies because they were not allowed the required access to the clubs in order to receive them.

The outcome of this case may only have application in limited circumstances because of the nature of the underlying facts. However, clubs or organisations in a similar position should consider whether they can make a claim for overpaid VAT.

Should you have any queries on the above issues please do not hesitate to contact either Joyce Nicolson or Mike Whittall at [VAT@aab.co.uk](mailto:VAT@aab.co.uk).

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9 QUEENS ROAD  
ABERDEEN  
AB15 4YL

TEL: 01224 625111  
FAX: 01224 626007

email: [accountants@aab.co.uk](mailto:accountants@aab.co.uk)  
web: [www.aab.co.uk](http://www.aab.co.uk)

## Truprint wins photo book case

In a recently released decision, the Tribunal found that *Truprint's* photo book products should be treated as books for the purpose of zero rating. HMRC had argued that VAT should be applicable to the books because they contained primarily pictures. The Tribunal wasted little time in concluding that a book containing pictures rather than text can still be regarded as a book for the purposes of VAT legislation.

*Truprint* had arrangements with various retailers including Tesco whereby customers could take their photographs to a data station, upload them to *Truprint's* website and select a photo book product from a range. *Truprint* put the photos into the selected book product which it then delivered back to the retailer within an agreed timeframe in exchange for payment by the customer.

HMRC argued that:

- 1) *Truprint* was providing photographic services, and
- 2) The photographic books did not constitute books for the purposes of the zero rating provisions.

The Tribunal dismissed this argument saying that books can still fall within the zero rating provisions whether they contain text or photographic images or a mixture of both providing they fulfil all the normal characteristics expected of a book.

With the increasing range of goods and services in the media sector, this decision is bound to be of interest to a range of businesses. In particular, businesses which have been paying VAT on similar products should now consider making claims in order to avoid losing out in view of the time limits involved.

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## Business Record Checks by HMRC

HMRC have announced that they will be undertaking a programme of checks on the adequacy of records maintained by small and medium sized businesses. They say they will be targeting businesses and organisations in Aberdeen and Inverness over the coming weeks.

The result of an earlier pilot exercise has led to HMRC deciding to complete up to 12,000 Business Records Checks by the end of this financial year. It plans to increase this to 20,000 for 2012/13.

In cases where records are found to be incomplete or inaccurate, HMRC have the power to issue penalties. We understand that HMRC will only be issuing penalties in the most extreme cases at the outset of the programme. However, they have said they will be imposing penalties of up to £3,000 for serious inadequacies in the longer term.

If you receive a letter from HMRC regarding this matter or if you require assistance to prepare for a visit please let us know. Read more in a recent [AAB Business Bulletin](#).

## Salary Sacrifice

This is a reminder about the VAT changes to salary sacrifice arrangements which take effect from 1 January 2012. We highlighted these changes in an earlier newsletter and HMRC have now issued further guidance in [Revenue & Customs Brief 36/11](#).

The changes follow the outcome of the *Astra Zeneca* case which found that VAT is due on all benefits involving a supply which is paid for through salary sacrifice. Common examples include cycle schemes, face value vouchers (other than child care vouchers) and parking spaces where employees have a specific amount deducted from their salaries as payment for the benefits.

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### *Salary Sacrifice contd./*

Under transitional arrangements, salary sacrifice schemes that were put in place on or before 27 July 2011 and which continue after 31 December 2011 will continue to be VAT-free until either the scheme changes, expires or becomes due for annual review. All other schemes will need to change after 1 January 2012.

If they have not already done so, businesses should be putting measures in place to be ready for these changes with effect from 1 January 2012. This may include reviewing current arrangements with employees to consider whether they wish to continue or to come out of the arrangement before the changes take place.

### **Low Value Imports**

HMRC have [announced](#) that low value goods being imported into the UK from the Channel Islands will no longer be free of VAT. The move is being made to counter perceived avoidance of VAT by UK businesses locating their mail order operations in the Channel Islands for the purpose of benefiting from VAT relief.

Goods that are imported into the UK from countries outside the EU are generally subject to import VAT and duty on their arrival in the UK. However goods with a value of less than £15 may be imported free of both import VAT and duty under Low Value Consignment Relief (LVCR).

The move follows years of lobbying by UK based businesses that have seen their businesses eroded by the disparity in VAT treatment. According to statistics, 75% of all international parcel post to the UK from outside the EU is estimated to originate from the Channel Islands. The ease of access to the UK consumer market via the postal system has made the Channel Islands attractive to businesses looking to move their operations to a non EU country in order to operate the LVCR.

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### *Low Value Imports contd./*

It has been suggested that HMRCs latest move to abolish the relief only in relation to the Channel Islands may be discriminatory and therefore illegal. However, it will remain to be seen whether a legal challenge will be made. Also open to question must be whether retailers will move their business elsewhere outside the EU in order to continue benefitting from LVCR.

## **Design and Build Contracts**

In our August 2011 Newsletter we included an article regarding changes HMRC were proposing to impose VAT on to "design and build" arrangements. This proposal received fierce opposition from various groups including housing associations, charities, property rental businesses and trade representatives. As a result, the proposal was subsequently withdrawn.

At the time our newsletter was issued this change was still being debated. However shortly after HMRC confirmed they had "re-evaluated" their proposal and concluded that zero-rating would remain.

A revised [HMRC Notice 708 Building and Construction](#), has been issued this month, with amendments at Section 3.4.1. to clarify the conditions for zero rating.

## **INTRASTAT declarations**

HMRC have [announced](#) two INTRASTAT changes that will take effect from 1 April 2012.

The first change is that it will become mandatory for a business to submit its monthly declarations to HMRC electronically.

The second change is that the deadline for submitting INTRASTAT declarations will be brought forward to the 21st day of the month following each reporting period end.

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*Intrastat declarations contd./*

INTRASTAT is the system used to compile statistical data about the movement of goods around the European Union. UK businesses have to report these transactions to HMRC on their VAT returns and if they reach a certain threshold also submit an INTRASTAT Supplementary Declaration every month.

The current INTRASTAT thresholds are £250,000 per calendar year for goods dispatched to other EU countries and £600,000 per calendar year for goods arriving from other EU countries.

These changes are part of HMRC's ongoing aim to introduce universal electronic filing of business tax returns by 2012.



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