

Construction News

June 2010

VAT changes from 1 April 2010

Numerous changes to VAT came into effect on **1 April 2010**. The most important of these are detailed below:

-the new four year time limit for assessments and claims came into full force.

-businesses registered on or after 1 April 2010 and businesses with an annual VAT exclusive turnover of more than £100,000 must submit VAT returns electronically for periods starting on or after that date.

-a new failure to notify penalty has had effect from 1 April 2010. This is essentially a new late registration penalty for all indirect taxes with the exception of Customs Duty.

-the new VAT & Excise wrongdoing penalty came into effect from 1 April 2010. This new penalty applies where a person issues an invoice that includes VAT which the person is not entitled to charge.

-HMRC can now publish the names of any taxpayer

(including businesses) that are penalised for deliberately understating tax of more than £25,000.

-all cheque payments by post will now be treated as being received by HMRC on the date when cleared funds reach HMRC's bank account.

-the VAT registration threshold, which determines whether a person must be registered for VAT, has increased from £68,000 to £70,000.

-two simplifications to the partial exemption de minimis rules were introduced.

Please visit www.hmrc.gov.uk and refer to Information Sheet 04/10 for details.

Cheltenham College Enterprises Ltd – substantially reconstructing a protected building

Cheltenham College is an educational charity which carried out works to some of its boarding houses, which are listed buildings. The college sold a long

lease to a wholly owned subsidiary that carried out the works and sought recovery of the VAT on its VAT Return. The subsidiary then sold the lease back to the college. It is this supply which was the point in dispute. Cheltenham College argued that this supply was zero-rated under Item 1 of Group 6, Schedule 8 VATA 1994. This provides the zero-rating of "*the first grant by a person substantially reconstructing a protected building, of a major interest in, or in any part of, the building or its site*". HMRC disagreed.

The Tribunal considered in detail the work carried out and referred to several other cases in determining whether there had been a "*substantial reconstruction*" and held that the building was in fact substantially reconstructed; supported by the fact that the works cost nearly as much as a new build. The grant of a long lease was therefore a grant by a person who had substantially reconstructed a protected building and, subject to the works

meeting the conditions laid down in Note 4 to Item 1, could be zero-rated.

New Rules on option to tax

Changes to the option to tax rules were also introduced on 1 April.

These changes include:

- the simplification of the operation of the option to tax. This change is a relaxation of the “exempt land” test as applied to occupation by banks that have provided funding for a development.

- simplification of the 6 month ‘cooling-off’ period to revoke the option to tax. This change provides that “use” of the land during the cooling-off period will no longer preclude revocation of the option to tax, and

- changes to the definition of a housing association.

Full details of these changes may be found in HMRC’s Information Sheet 02/10.

Potential opportunity for VAT recovery on business entertainment

A recent opinion from the European Court of Justice (ECJ) has cast doubt over the UK’s ability to block the deduction of input tax relating to business entertainment. The Advocate General’s (AG’s)

opinion is that the Netherlands is not complying with European legislation in certain circumstances where input tax is blocked by reference to the purpose of the goods and services purchased, i.e. business entertaining, as opposed to the nature of the goods and services, e.g. food and drink. As the UK legislation is drafted in a similar way to Dutch law the final judgment will be relevant to the UK.

There is no guarantee that the ECJ will align with the AG’s opinion and at this stage, any claims to HMRC would be on a protective basis only but if you would be interested in submitting a claim please speak to your usual Ensors contact.

False self-employment - an update

The Treasury has now published the responses to the consultation on false self-employment in the construction industry. Even though some very reasonable arguments were put forward, the Government is pressing ahead with plans to introduce legislation for this. This will include objective tests to determine the tax status of workers within the industry. However, it is accepted that the construction industry

has been badly affected by the recession and therefore the legislation should not start until the industry shows signs of a recovery, so that it will not be adversely affected by the new rules.

The tests to determine status will probably be the following:

- do workers provide tools in addition to the usual tools of the trade?

- do they provide materials to complete the job?

- do they provide other workers to carry out jobs, at their own expense?

As a result of the consultation other tests may be added, as well as very clear guidance.

Contact

For further information regarding any of the matters discussed please contact our VAT specialist Helen Carey on 01206 395599 or email helen.carey@ensors.co.uk

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