

Construction News

January 2010

Change in VAT rate

The standard rate of VAT reverted back to 17.5% on 1 January 2010.

Under the normal rules, standard rated supplies with tax points created by payments received or VAT invoices issued on or after 1 January 2010 will be liable to the standard rate at 17.5%.

However, there are optional change of rate rules that can be applied. You can apply these rules selectively to different customers without notifying HMRC.

Where you provide services which commenced before 1 January 2010 and are still in progress after this date, you may account for VAT at 15% on the work carried out before 1 January 2010.

This will be of benefit where your customers/clients are private individuals, unregistered businesses or charities.

VAT – Reversion of the standard rate to 17.5% provides further detailed guidance for VAT registered businesses. Please visit www.hmrc.gov.uk/vat/forms-rates/rate-rise-guidance for details.

Possible refund opportunity

When a developer constructs a house or relevant residential building, any VAT on the purchase of carpets, most fitted furniture, white goods etc. cannot be claimed due to a piece of legislation known as the 'blocking order'.

These goods are also restricted from zero-rating when they are encompassed within a zero-rate construction service. This leads to an additional VAT cost for developers. We believe that the UK policy on this issue is more restrictive than EC law intends and there is an opportunity for developers to reclaim VAT.

Although it may be some time before this dispute is settled, protective claims should be submitted to HMRC by interested parties to avoid being caught by the 4 year cap on back claims.

Deposits paid on land sales

HMRC has issued Revenue and Customs Brief 36/09 which explains HMRC's view on how deposits paid in relation to sales of land, and in particular sales by

developers to Registered Social Landlords (RSLs), should be treated.

Where development land is sold to RSLs, it has become increasingly common for the deposit to be made available to the vendor at the time of exchange when the land is still bare land. This has raised questions about the VAT treatment of the deposit, and whether it can be treated as part payment for a future zero-rated supply of a zero-rated building to be constructed at a later date.

HMRC's view is that the VAT liability of the deposit is determined by the anticipated nature of the supply.

Zero-rating for Charities

HMRC has issued Revenue and Customs Brief 39/09 which announces a change in HMRC's interpretation of the legal provisions that apply to the zero rate for new buildings used for a relevant charitable purpose, and the withdrawal of ESC 3.29 and two related concessions on 1 July 2010.

Charities wishing to take advantage of the zero rate

available for the construction of, and the acquisition of, a building intended to be used solely for a relevant charitable purpose must satisfy the 'solely' requirement of the legislation. Charities will now be able to do so without the need of ESC 3.29, if the building concerned is intended to be used 95% or more for a relevant charitable purpose using any fair and reasonable method to measure use.

There will be a transitional period of 12 months from 1 July 2009 in which charities have a choice of using either ESC 3.29 or the new interpretation of 'solely'.

VAT Information Sheet 08/09 also provides further detail.

DIY Housebuilders Update

HMRC has issued Revenue and Customs Brief 45/09 which announces changes to the forms and guidance used by individuals who are claiming back VAT that they have incurred as DIY housebuilders and converters on the costs.

Recent case law

Lower Mill Estate Ltd

Lower Mill Estate owned land which was for sale in plots, each with planning permission for the construction of a holiday home. LME is owned by Mr. P, who also owns Conservation Builders Ltd (CBL).

CBL builds the holiday homes for those customers who buy plots of land from LME. Customers are under no obligation to engage CBL, or to build a home on their plots.

LME could potentially have sold completed homes to its customers. These would have been standard-rated sales because the owner is not entitled to reside in the building throughout the year. Instead of selling completed buildings, a structure was adopted whereby LME sold the land (which was subject to VAT) and CBL provided a zero-rated construction service.

The tribunal held that LME and CBL had engaged in 'abusive practice', which should be redefined as a

single supply of a holiday home from LME to customer.

The supply would be standard rated and the consideration for that supply would be the total sums payable for the land and construction services taken together.

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

This information is given by way of general guidance only, and no action should be taken solely on the basis of the information contained herein. No liability is accepted by the firm for any actions taken without seeking appropriate professional advice.

If you do not wish to receive this newsletter in the future, please contact Tracy Blanchard on 01473 220022 or email tracy.blanchard@ensors.co.uk