

Constable VAT Consultancy

VAT Focus 18 July 2012

Doctors' services are not similar to consultancy

Dr Nigel Stanley and Dr David Talbot carry out medical examinations, as requested by the Australian Government's Department of Immigration and Multicultural Affairs (DIMA) as part of the application process for an Australian Visa.

The type of work carried out by the doctors in the course of these examinations was at one time considered to be VAT exempt, but following the ECJ case of *D'Ambrumenil*, became liable to VAT at the standard-rate.

Both doctors took legal advice and were informed that their supplies were outside the scope of UK VAT as they were supplies made to the Australian Government and were serviced of a type treated as 'supplied where received'. HMRC disagreed and ruled that the services could not be classified as supplied where received as they do not fall within any of the appropriate headings, in particular, they are not 'consultants'.

The Tribunal agreed with HMRC and ruled that, even if the services had fallen under this heading, the supply is not to DIMA but to the UK resident visa applicant who commissions and pays for the examination. The supply is therefore received and is taxable in the UK.

New means of transport could be zero-rated

This recent VAT Tribunal case considers a situation where a soldier serving in the Royal Military Police, stationed in Germany, purchased a new BMW car. At the time of purchase he completed the necessary documentation stating that the vehicle would be removed to Germany allowing him to obtain the vehicle VAT free.

After ordering the vehicle, the soldier was told at short notice that he was to be deployed to the Sudan. He collected the BMW and drove the vehicle to Germany to ensure he met the requirements to remove the vehicle from the UK within 2 months. He then completed the necessary paperwork and then drove back to the UK where the car remained while he was in the Sudan.

Although it was the intention that the car would return to Germany, circumstances changed and the soldier was redeployed to the UK. HMRC issued a demand for VAT due on the car stating that by the time the car was supplied the soldier's intention had changed.

The Tribunal held that HMRC had no right to raise such a demand but went on to consider if an assessment against the supplier could be valid. They concluded that it could not as the soldier's intention was always that the car would be permanently used in Germany and his declaration was therefore valid. The Tribunal also stated that they did not feel any liability to account for VAT arose when the vehicle returned to the UK as there was no supply at that time on which a taxable acquisition could arise.

Hire of wedding venue is subject to VAT

The recent Tribunal case, *Drumtochty Castle Ltd*, considered whether the hire of a castle as a wedding venue could be treated as a VAT exempt supply of land or whether there was a composite taxable supply of a 'package' of wedding services.

Customers of the company are charged a facility fee, which allows those customers and their guests the exclusive use of the castle and grounds for the duration of a function. This fee also includes afternoon tea on arrival and B&B accommodation for up to 22 people. Additional (optional) services are frequently provided at extra cost and catering is arranged by customers with third parties.

The part of the facility fee that relates to the use of the castle is treated as VAT exempt, while the remainder (the part relating to afternoon tea and B&B rooms) and any additional extras are treated as taxable. HMRC argued that the supply of the castle was not letting of immovable property as the customer did not acquire an interest in the land and the company's staff remains on site during the function. The supply was instead of a prestige event.

The Tribunal took into account several recent cases and concluded that that it is artificial to split the additional services from the provision of the building. Furthermore, even if the use of the castle was the predominant element of the supply there is no grant of a licence and that supply would in itself be subject to VAT.

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Thinking outside the box