

Constable VAT Consultancy

VAT Focus 18 December 2012

Contract v. Behaviour

In an important case in terms of legal approach and, for the taxpayer, sums involved the Court of Appeal (CoA) has overturned the decision of an Upper Tribunal in the case of Secret Hotels (Medhotels). The taxpayer believed that sales of hotel accommodation via its website or third party travel agents were outside the scope of UK VAT under the Tour Operators Margin Scheme (TOMS). HMRC argued that UK VAT was due as the taxpayer, not the hotels, was acting as the principal in the transaction.

The First Tier Tribunal (FTT) acknowledged that the contracts clearly stated that the hotels were the principal but ruled that the whole document was not consistent with that declaration. Also the behaviour of the taxpayer indicated that they, not the hotels, were the principal. The taxpayer appealed to the Upper Tier, which ruled that none of the matters raised by the FTT allowed it to ignore the agreement showing the hotel to be the principal. HMRC appealed that decision and the CoA agreed with the FTT's view that there must be regard to the "whole facts" and not just the contracts.

This emphasises the importance that a contract reflects the actual activities not just what gives the desired VAT treatment and could have an impact of similar agency/principal transactions in all sectors. However, travel intermediaries in particular may wish to review their position at this time.

Vehicles for the Disabled

Public Notice 701/59 "Motor vehicles for disabled people" has been replaced by two helpsheets. VAT 1615 is guidance for customers and VAT 1616 is guidance for suppliers. Both contain the declaration VAT 1615a required to be made by the customer and the supplier. This signifies a tightening up of HMRC's view that certification is a requirement of the zero-rating process rather than a recommendation as per the public notice.

From **30 November 2012** HM Revenue & Customs (HMRC) has introduced a new voluntary scheme for motor and boat dealers. The aim of the scheme is to gather information from suppliers of vehicles and boats about the use of the VAT zero rate, on sales of motor vehicles and boats adapted for the use of wheelchair users. Participating car dealerships and boat suppliers can provide information by completing a survey form.

HMRC will use the information to establish general trends, values and numbers and to gain a better understanding of the current use of the relief to assist to improve guidance. Read more about both these matters in HMRC's Briefs [34/12](#) and [35/12](#)

Insurance mis-selling reviews change in VAT treatment

The UK currently exempts from VAT mis-selling review services and stand-alone helpline services supplied by insurance intermediaries, subject to certain conditions being met.

The European Commission has recently queried this treatment and having reviewed the position HMRC has concluded that the Commission is correct in its view that these services are taxable. From **1 April 2013** the supply of insurance mis-selling review services and stand-alone helpline services supplied to insurers will no longer be treated as exempt but will become subject to VAT at the standard rate. This does not affect PPI mis-selling services, which have always been treated as taxable. Read more in HMRC's [Brief](#) on the subject.

New NOVA

From **15 April 2013** there will be a legal obligation to notify HMRC within 14 days of a vehicle permanently entering the UK using an online system called Notification of Vehicle Arrivals (NOVA). Licensing at the DVLA will only take place once the NOVA notification has been processed by HMRC.

Christmas and New Year

CVC will not be sending out Christmas cards this year and is instead donating the cost of those cards to a charity that helps the homeless to find permanent accommodation. However, we would like to take this opportunity to wish all our clients and regular readers a Merry Christmas and a peaceful and prosperous New Year.

We will be closed for business on 24th, 25th and 26 and 1 January, but will be available over the rest of the Christmas season.

Visit our [website](#) for current news updates. To discuss any of the above issues please contact us on 0207 830 9669 or email: info@ukvatadvice.com. You can also follow CVC on [Twitter](#)

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Thinking outside the box