

Constable VAT Consultancy

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Grant or Consideration?

The case of *Groundwork Cheshire (GC)*, heard in September 2012, concerned the provision of environmental consultancy services to businesses. The services were supplied at no cost to customers via GC's wholly owned trading company, *Groundwork Environmental Services (Cheshire) Ltd (Groundwork)*.

Clients do not pay for the services received (health and safety management and environmental consultancy); however, Groundwork receives income by a combination of funding from the European Regional Development Fund (ERDF) and the North West Regional Development Agency (NWDA). The point at issue is whether the sums received by Groundwork are outside the scope of VAT, or third party consideration for supplies of services and standard-rated. HMRC argued that the sums received were a block grant and outside the scope of VAT.

GC argued that the payments were third party consideration, which the First Tier Tribunal agreed as there was a direct correlation between the amounts of work done and the monies received. This is an area of interest to HMRC at the moment. In other recent cases HMRC has argued against treating grants as outside the scope of VAT. It is difficult to see a clear pattern beyond (a) HMRC's stance in each case seems designed to maximise VAT collection and (b) it is extremely unwise to assume that describing a payment as a grant automatically means that it is not subject to VAT.

Outstanding VAT Returns Campaign

HMRC have announced a campaign to get VAT registered entities with one or more VAT returns outstanding to submit and pay them by 28 February 2013. Whilst the publicity for the campaign says that returns submitted by that date will get "the best possible terms" HMRC has not advised what those terms are. However, HMRC does say that those VAT registered entities that still have outstanding returns at the end of the campaign may find themselves subject to greater scrutiny..

What cost an appeal?

Two working men's clubs submitted VAT repayment claims for gambling machines takings. Both were rejected by HMRC. Their accountant was advised to lodge an appeal standing behind the Rank case within 30 days of HMRC's rejection, but mistakenly thought that doing so would incur costs beyond the value of the claim. When Rank won the clubs resubmitted the refund claims asking for an extension of time to appeal. HMRC asked that the appeals be struck out. Despite some sympathy for the clubs, the Tribunal agreed HMRC's application. In recent times the Tribunal has shown little leniency regarding time limits, illustrating the importance of careful management of disputes with HMRC.

Finance Leases – Goods or Services?

A recent EU judgement in the case of *EON Aset Menidjunt* has potentially put the current treatment of a finance lease as services in doubt. HMRC have issued a brief [37/12](#) saying that any changes in the treatment of finance leases will be not be retrospective and that current HMRC guidance should be used until further notice. HMRC have also stated that the input tax block on leased cars (50% of the VAT) would not be affected if finance leases were to be seen as a supply of goods.

1792 Act fails to give VAT relief

The Whitchurch Bridge Act 1792 (the 1792 Act) established a corporate body, the Company of Proprietors of Whitchurch Bridge ("CPWB") to build a toll bridge over the Thames. The 1792 Act provided for CPWB to benefit from extensive tax relief. In replacing the bridge (an obligation of the 1792 Act) CPWB was to incur £660,000 of VAT. As the tolls were treated as non-business this VAT would be irrecoverable. CPWB sought to be listed as a section 33 body (enabling VAT incurred in making non-business supplies to be recoverable). HMRC rejected the application and the CB appealed saying that the 1792 Act was intended to relieve the business of taxes such as VAT (which s33 status would enable).

The Tribunal ruled that the language of the 1792 Act did not suggest that Parliament had intended that the CB should be relieved of taxes which others (contractors for the bridge works) were liable to pay to the HMRC which were then passed on by those others in the price they charged for goods or services. Thus, because the 1792 Act failed to predict how VAT would operate it could not relieve the CB from paying it.

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Thinking outside the box