

Constable VAT Consultancy

VAT Focus 5 April 2013

Not a relevant association

In a recent Upper Tier Tribunal (UTT) case the taxpayer, *the British Association of Leisure Parks, Piers & Attractions Limited*, sought to overturn a First Tier Tribunal (FTT) decision that their subscriptions were not exempt from VAT.

The exemption for subscriptions to trade unions, professional and other public interest bodies, applies to certain non-profit making associations including those whose primary purpose is to “make representation to the Government on legislation and other public matters which affect the business or professional interests of its members.” The Upper Tier Tribunal decided that the Association’s primary purpose was not making representations to Government, and that the First Tier Tribunal was correct to look at the constitutional documents of the taxpayer as well as considering the association’s actual activities. Therefore, the claim for overpaid VAT (the claim went back to 1982) failed. HMRC’s assertion that such a repayment would amount to unjust enrichment was not considered.

Live/Work DIY

A recent case, *Anthony Barkas*, considered a development involving two barn-like properties with light industrial use planning consent (B1). The taxpayer applied for permission to convert one of the barns into a dwelling, the other to remain B1 use, the two to be used together as a live work unit (although the two properties were not physically linked they were close to each other). Permission was granted but with conditions, one of which (“condition 6”) was:

“6. The workshop/office within the application site shall only be used/operated by the occupiers of the dwelling hereby granted permission.”

The taxpayer submitted a DIY house builder’s claim. HMRC rejected this on the basis of condition 6, as “it is not possible to use the dwelling separately from the working space” the claim was not valid.

HMRC had an email from the planning authority which confirmed HMRC’s interpretation that the separate disposal of the dwelling was not permitted was correct.

The legal criteria for a dwelling included that “the separate use, or disposal of a dwelling is not prohibited . . .” The Tribunal ruled that condition 6 simply placed limitations on the use of the remaining commercial building rather than a prohibition on the disposal of the dwelling. They placed “no weight” on the planning authority’s opinions; the conditions must be interpreted as they stand. Therefore the DIY claim was valid.

Increasingly the rulings on DIY cases appear to be varying on very slight differences in facts and this highlights the importance of considering at a very early stage in a development whether there are likely to be any points of contention and addressing these with HMRC or the planning authorities as appropriate.

HMRC issue Information Sheet on taxation of caravans

HMRC’s Information Sheet [04/13](#) details changes to the taxation of caravans taking place on **6 April 2013**.

European Court case on the right of a Tax Authority to reject and application to register

A Latvian building company applied to register for Latvian VAT. The Latvian authorities (VID) rejected the application on the grounds that the business did not have the necessary human and technical resources, was not registered on the Latvian Register of Construction Companies and had made no supplies. The right of VID to reject the registration was contested and the matter was referred to the European Court. The Court ruled that the VID could only refuse such an application if it had sound evidence of the risk of tax evasion by the applicant.

And finally . . . happy 40th birthday UK VAT

The tax was introduced on 1 April 1973 following Britain’s entry into the EU. At that time the rate of VAT was 10%, which must have made life easier. Unfortunately, since then it has become more and more complicated!

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](#)

This newsletter is intended as a general guide to current VAT issues and is not intended to be a comprehensive statement of the law. No liability is accepted for the opinions it contains or for any errors or omissions.

Thinking outside the box