

# Constable VAT Consultancy

## VAT Focus 4 May 2012

### Road Fuel Scale Charges (RFSC) – Possible claims for overpaid VAT

The RFSC is a simplification measure that allows businesses to account for VAT when business road fuel is put to private use. The system uses a standardised scale charge to value private use fuel. HMRC has issued a [Technical Note](#) and Revenue & Customs Brief [11/12](#) outlining the proposed changes to be made to the RFSC.

The proposed changes will bring into legislation the effect of two existing extra statutory concessions, the 'zero-rate' concession, which allows businesses to choose not to recover any VAT on road fuel and not account for scale charge VAT, and the concession allowing businesses to keep detailed mileage records and reclaim VAT only on fuel used for business mileage. HMRC will also simplify the legislation and the process for the annual revalorization of the scale charges and withdraw one extra statutory concession which allows partly exempt businesses to account for scale charge VAT based on the proportion of VAT recovered. A period of consultation on the proposed legislation commenced on 25 April and ends on 20 July 2012.

The changes will also correct a defect in existing legislation. Under existing law, where a business has provided fuel to an employee for their private use and has made a charge for that fuel, they are required to account for VAT on the basis of the RFSC, unless they have accounted for VAT on the basis of detailed records of private mileage or the charge made was at least for the cost of the fuel. HMRC now recognises that there is a defect in this aspect of current law and that, where the business does make a charge for the private use of the fuel, the business should be given the option of accounting for VAT on the basis of the amount charged to the employee. Any businesses who have overpaid VAT as a result of this defect may submit a claim for repayment to HMRC.

Should you wish to discuss any of the above, or believe you have overpaid VAT as a result of the defect in existing legislation, please contact your usual CVC adviser.

### Wall retained during construction – is zero rating possible?

In this recent case; *Trustees of the Eaton Mews Trust* ("the Trust"), the Tribunal considered whether zero-rating was available for the construction of a new dwelling by the Trust. The property concerned was a two storey dwelling forming part of a terrace of houses. Major modernisation work was required but the Trust decided instead to demolish the property, save for the side party walls and the rear wall.

Planning permission and conservation consent for the works were obtained from the local planning authority including the following sentence, "*The City Council has considered your application and grants consent for the works referred to below subject to the conditions and in accordance with the plans submitted*". The plans, which were individually identified in the permission and consent, showed that the rear wall was to be retained. Two further conditions of the conservation consent were that "*You must only carry out the demolition and development according to the proposed arrangements*" and "*You must carry out the demolition and development without interruption and according to the drawings we have approved*". The City Council also confirmed its own view of the effect of those conditions in an email to the trustees' architects: "*You are advised that you cannot fully demolish the rear elevation of the mews house and must implement the permission in accordance with the drawings approved...*" HMRC argued that the retention of the rear wall was not "a condition or requirement or statutory planning consent or similar permission" and therefore the works did not qualify for zero rating as relating to the construction of a new dwelling.

The Tribunal allowed the appeal holding HMRC's interpretation of the legislation is too restrictive and in its judgment the statutory condition is met if there is a positive requirement for retention of the relevant façade, whatever the reason for its imposition.

### New edition of HMRC's VAT Guide

HMRC has published the latest version of Notice 700, The VAT Guide. This notice cancels and replaces the previous version in February 2011. This notice has been restructured and rewritten to improve readability. The technical content is largely unchanged from the April 2002 edition, but incorporates various updates published including the VAT rate change and changes to the place of supply rules as a result of the EU VAT package.

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Thinking outside the box