

Constable VAT Consultancy

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Repayments by HMRC – further monies due?

Two cases have recently been heard in relation to an initial refusal by HMRC to repay input tax claimed on the grounds of possible carousel fraud. After successful appeals both taxpayers received the withheld input tax from HMRC.

In the first case, *Hira Company*, the taxpayer argued that as well as the input tax and repayment supplement interest was also payable. Timings are critical here. HMRC's refusal to pay first occurred in 2006. The taxpayer appealed in 2008. The case was decided in 2011. Meanwhile, the right to interest on certain types of repayment (of which this was one) was withdrawn on 1st April 2009. The appellant argued that the Tribunal was able to direct that interest was payable on claims that occurred within the period of transition. However, the Tribunal decided that it could not direct the payment of interest in such a case.

The second case, *Our Communications Ltd*, related to the payment of repayment supplement on voluntary disclosures requesting further repayments of input tax submitted shortly after the relevant VAT returns (early 2006). HMRC's refusal to pay repayment supplement was overturned. The Tribunal chairman stated '*our decision is that section 79 of the VATA applies to all payments of VAT credits whether they are claimed in a VAT return or otherwise after the return has been submitted*'.

This ruling indicates that repayment supplement should be payable on claims of overpaid VAT where the claim is not made on a VAT return and repayment is delayed. Please contact CVC if you think this could be relevant to you.

Rank Claim case remitted back to First Tier Tribunal

Following VAT Tribunal success in a similar argument for other types of gaming machines; Rank argued that under the principle of fiscal neutrality (essentially similar supplies should be subject to the same VAT treatment) the VAT paid to HMRC on part III machines (gaming machines operating under Part III of the Gaming Act 1968) was repayable as these machines were similar to Fixed Odds Betting Terminals (FOBTs) which were exempt from VAT. The VAT involved was approximately £30 million.

In reaching their decision, the First Tier Tribunal (FTT) referred to the earlier Rank case allowing the appeal as "to the generality of all players they were all just gambling machines".

HMRC appealed saying that the FTT had erred in law in reaching its decision. The European Court of Justice (ECJ) has replied to a referral stating the differences between the types of machine "are likely to have a considerable influence on the decision" (of which to play) "of the average customer". In view of this the first Tribunal did err in law and the case must be reheard with the "benefit" of the ECJ's clarification.

Energy Saving Materials

In the case of *Pinevale Ltd*, Polycarbonate panels for conservatory roofs and radiator reflector strips were ruled to be reduced rated. HMRC has argued that the panels were primarily roof panels with insulation as their secondary purpose. Importantly, the Tribunal saw no distinction between a whole roof replacement and replacing individual panels for the 5% rate to apply.

Football VAT

A business supplied football pitches and organised leagues for teams hiring the pitches. HMRC ruled the whole supply was standard rated. The company appealed that it was making separate supplies of exempt pitch hire and standard rated league management services. The Tribunal allowed this appeal and the judge said that if it were deemed a single composite supply the predominant element was the exempt pitch hire.

Single Compliance Process (SCP) for SMEs

Originally announced in May 2011, with a proposed implementation date of 1 January 2012, HMRC has announced the extension of the trial phase of the Single Compliance Process for enquiries across a range of taxes including VAT. HMRC states "potential implementation" will depend on "trial outcomes". A briefing paper on the extended trial can be viewed [here](#).

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Thinking outside the box