



VAT Update - February 2017

In every update, our VAT team brings you a brief summary of news from the world of VAT. This month we focus on items which will be of interest to anyone who....

Has a VAT assessment under appeal

Total Limited has challenged the requirement to pay VAT assessments before they can be appealed. It argued that this breaches the EU principle of equivalence as there is no similar rule for income tax or SDLT.

The Court of Appeal has dismissed this argument, stating that the pre-payment rule does exist for some taxes (e.g. IPT) and HMRC is not required to extend its most favourable procedural rules to VAT appeals.

Income tax is a very different tax from VAT and HMRC was not required to justify the difference in treatment.

Incurs expenses that benefit the company's directors

An appeal by Doran Bros (London) Ltd considered whether fees incurred by the company on tax advice was for the purposes of the business. HMRC argued that the advice, which minimised the tax, NICs and CT payable on director rewards, was incurred for the benefit of the sole director and therefore the VAT was not recoverable.

The FTT held that the contract was with the company,

which did benefit from the advice. The fact that the director also benefitted did not prevent the costs being incurred for the business.

Is building a new dwelling

In order for building services to qualify for zero rating, a new dwelling must be covered by valid planning permission. In the case of Nigel Williams, a planned extension became a new dwelling as it became apparent during the course of the work that the main building would need to be demolished for structural reasons.

The FTT agreed with HMRC that work performed before the planning permission was amended could not be zero rated, even though the new permission had retrospective effect.

Is a holding company

The CJEU has commented again on VAT recovery within holding companies. In response to a Hungarian referral, the Court confirmed that a holding company will only be performing an economic activity in regards to the management of its subsidiaries if it charges for these services. If there is no charge, VAT recovery must be restricted accordingly.

If you would like to know more on any of the points above or have another VAT issue you would like to discuss, please contact Sarah Davis (sdavis@pem.co.uk) or your usual PEM adviser.

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