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UK Indirect Tax Conference 2015

Consumer Business

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Working with HMRC

Background to the changing environment in VAT

HMRC consultation document on “Improving Large Business tax compliance”; 3 key propositions:

- Legislative requirement to publish a tax strategy
- Code of Practice on taxation for Large Business
- “Special measures” regime to tackle tax planning or where there is no collaborative engagement with HMRC

So what is going on at HMRC?

- What does this mean for large businesses?
- Current challenges in dealing with HMRC (governance/ discretion)
- Increased use of powers and penalties
- Increased use of Alternative Dispute Resolution (ADR)?

Are HMRC acronyms helpful?

HMRC priorities in managing Large Businesses:

- Relationship management
- Prioritisation of risk
- Real time working
- **Assist businesses in resolving uncertainty...**

Are the acronyms helpful?

- Litigation Settlement Strategy (LSS)
- Tax Dispute Resolution Board (TDRB)
- Penalty consistency panel (PCP)
- High Risk Corporate Project (HRCP)

How should you be managing your VAT?

Is it all one way traffic?

What should a business be doing to manage their VAT?

- Governance – it's a 2 way street!
- Helping HMRC to resolve issues?
- Strategies for managing penalties and information requests?
- Managing your CRM or HMRC contact
 - Risk review
 - Audit programme
- More meetings or “ping pong” correspondence?

Case law update

Cases – present and future

Distance sales

- Background – what is the issue?
- European Commission working paper of 5 May 2015:
 - Submissions from UK and Belgium.
 - Technical analysis.
- Individual member states, e.g. Denmark.
- How might this play out?

Cases – present and future

Input tax – “free of charge” activities

Does your business provide anything free? For example

- Promotional items
- Rewards
- Samples
- Vouchers

And if so, what's your input tax position?

Cases – present and future

Input tax – “free of charge” activities

Sveda (Case C-126/14):

- Baltic mythology trail provides free entrance, but gift shop/café makes taxable supplies.
- Input tax recovery position on cost of building the trail?
- Is the “free” activity business or non-business?

What if you charge for entrance – *Roald Dahl Museum* case.

So how does this relate to consumer businesses?

Cases – present and future

Input tax – *Associated Newspapers*

Example case – *Associated Newspapers*.

- Two appeals – one on output tax, one on input tax. Taxpayer has won both at FTT (most recently on 13 August 2015).
- Taxpayer provided vouchers free to newspaper buyers.
- Taxpayer had bought those vouchers either direct from issuers (who were high-street retailers) or via an intermediary.
- FTT said input tax was a cost of taxpayer's business and so was recoverable.
- Cases now joined at Upper Tribunal – case was heard on 5-7 October.

Cases – present and future

Input tax – other cases

- *Norseman Gold* – Upper Tribunal hearing starting 30 November 2015.
- *University of Cambridge* – HMRC seeking leave to appeal to Court of Appeal.

Cases – present and future

Fast Bunkering and A-B-C chains

Fast Bunkering Klaipeda – CJEU judgment on 3 September 2015.

- CJEU output tax case on whether zero-rating applies only to end supply of shipping fuel, or to all parties in A-B-C chain.
- CJEU says although fuel is sold contractually from A to B to C, there may only be an A to C supply. Why?

Cases – present and future

Fast Bunkering and A-B-C chains

Fast Bunkering Klaipeda – CJEU judgment on 3 September 2015.

- Answer: the *Shipping and Forwarding Enterprise (SAFE)* case.
- Does B have the right, at any point, to dispose of the goods as owner? If not, no supply of goods to B.
- But what does this mean for input tax?

Cases – present and future

Fast Bunkering and A-B-C chains

Fast Bunkering Klaipeda – CJEU judgment on 3 September 2015.

- If B thinks it is making and receiving a supply, B will consider it has a taxable activity, which will influence input tax recovery.
- If *Fast Bunkering* / *SAFE* indicates B does not have a taxable activity, recovery will be reduced.
- Terms of chain transaction – are goods ever under B's possession or control?

Cases – present and future Claims

- *Iveco* – application of Reg 38. Upper Tribunal hearing on 24-26 November 2015.
- *Vodafone* – what is a valid claim and what can you change? Upper Tribunal hearing on 10 December 2015.
- *Bratt* – same issue! Upper Tribunal hearing on 14-15 December 2015.
- *Southern Cross* – when is a claim settled? HMRC have appealed to Court of Appeal.
- *Leeds City Council* – Court of Appeal hearing on 8-9 December 2015.



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