



## KPMG's Indirect Tax Update

TAX

### Highlights

In last week's edition we brought you the breaking news of the Upper Tribunal's first case in *John Wilkins (Motor Engineers) Limited & Others*, known as the 'Compound Interest Project' (CIP). The Tribunal agreed with the High Court's decision in *VIC GLO* which established that there is an entitlement to be paid compound interest where VAT has been over paid in breach of Community Law, but that the place for such claims is the High Court. The issue of time limits for claims has also yet to be finalised. Whilst there is a number of potential deadline dates for claims, the High Court has previously found claims should be brought within six years of the date on which the liability error was clarified. However where claims for interest are rejected or simple interest paid businesses must consider protecting their position within 30 days. If you have any questions around the impact of the case please do contact your normal advisor.

As 1 January looms near it is good to see HMRC have been consulting interested parties on its draft portal for the new VAT refund procedure. The new procedure will replace the existing Eighth Directive refunds. From January all UK established businesses will submit their claims for VAT incurred in other Member States via the UK portal. Following initial checks claims will then be sent to the relevant Member State of Refund for payment. The system itself is an improvement as it is on-line and provides for interest for delayed repayments. As for the portal the demonstration version was relatively user friendly and importantly looks like it will be ready for 1 January 2010. On the downside the inability to import data means that making claims will be a laborious process requiring the manual keying of data on a line by line basis.

Whilst on the subject of 1 January 2010 much of the focus is on the VAT Package and the change of rate. It is important to bear in mind other changes which take effect in the New Year. This week's edition brings you reminders of the changes to EC Sales Lists (ESLs) for goods as well as changes to the Tour Operators Margin Scheme (TOMS).

Finally there is also good news for taxpayers as statutory interest for VAT overpayments rose to half a percent after remaining at zero percent since January this year. Unfortunately default interest also rises half a percent to three percent as HMRC attempt to harmonise interest rates.

To access the highlights podcast, please click [here](#).

To access the full podcast, please click [here](#).

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## From the Tax Authorities

### HMRC Revenue & Customs Brief 59/09 – HMRC position following InsuranceWide and Trader Media Group

HMRC have issued a brief outlining their position following the High Court's decision in the joined cases of *InsuranceWide and Trader Media Group*. Back in May the High Court found that InsuranceWide and Trader Media Group's supplies of on-line introductory services were exempt. HMRC have been allowed to appeal the case which will be heard at the Court of Appeal in due course. HMRC have confirmed they will pay related claims, subject to the normal rules and will issue protective assessments pending the outcome of litigation. However HMRC are limiting repayments to introductory services of insurance only, and that claims will not be made in respect of finance introductory services.

To read the Brief in full click [here](#).

### HMRC interest rate charges

HMRC announce their latest interest rates charged on late payments and paid on overpayments. Rather than being driven by a change in the lending rate these changes are as a result of the harmonising of interest rates across all taxes. For indirect taxes including excise and custom duties, both interests on late payments and overpayments will increase by half a percent to three percent and to half a percent respectively. This means statutory interest will start to be paid again following an extended period at zero percent. The new rates will be effective from 29 September 2009.

Click [here](#) to read more details.

### HMRC releases statistics of annual tax receipts

Following Budget 2009, HMRC have now released pre-announced statistics of annual tax receipts from 2001/02 to 2009/10 inclusive. The figures remain the same as forecasted in the Budget report. The net VAT receipt shows a dramatic fall of 19 percent from 2008/09 to 2009/10, reflecting both the temporary reduction in the standard rate of VAT to 15 percent and a continuation of the factors that weakened VAT receipts due to the recession in addition to a provision of extra repayments resulting from Fleming claims.

Click [here](#) to read the table. Click [here](#) to read the Budget report in April 2009.

### HMRC Notice 453: Gaming Duty

This notice cancels and replaces Notice 453 (September 2008). It has been rewritten to include the changes introduced in the 2009 Budget, which raised the gross gaming yield bandings, removed the need to list individual dutiable casino games within the law, and included charges for equal chance gaming (for example, poker) within the scope of gaming duty. This notice also explains changes to the new Review and Appeals procedures.

Click [here](#) to read the Notice.

## UK News

### VAT Refund Procedure – UK Update

As you will be aware as part of the 2010 VAT Package changes the new VAT refund procedure will replace the Eighth Directive claims. Under the new on-line system claims will be submitted via the Member State of Establishment (MSE), i.e. a UK established business incurring overseas VAT in other Member States will submit these claims via HMRC as opposed to the individual Member States. Following basic verification checks by the MSE, the claims will then be passed electronically to the Member State of Refund (MSR). The initial checks undertaken by the MSE remove the burden of providing a Tax Certificate of Status. Unlike the Eighth Directive, the new refund procedure provides specific deadlines. The MSR has four months to process a claim from date of

receipt and a further ten days to make payment. This time can be extended up to eight months where further information is requested. Member States who fail to meet refund deadlines are required to pay interest.

HMRC have recently been demonstrating a mock up of the UK's intended portal. HMRC describe the portal as a 'post box' to submit claims. Because all information is entered in the MSE this brings a certain degree of commonality particularly in terms of process, however some Member States will have different information and evidence requirements. Certainly on-line submission will be easier than hand written claims and as well as drop down categories HMRC are trying to provide useful on screen hints and information to ease submission. Acknowledging a lack of time and money HMRC admitted there were some constraints in terms of what they were able to achieve.

The key weaknesses of the draft portal are the inability of importing or exporting data. Each item has to be entered individually and all drop downs and text fields completed. There is no ability to import data from Accounts Payable or similar systems or software. Even where similar data is used i.e. the same supplier, full details have to be repeated. Once line items have been entered there is only very limited summary information which can be seen. Therefore the only way to check data is to go in and view each line item. There is no export tool that would allow for example a VAT manager to check details improving the accuracy of claims. Businesses will also be required to detail their business activities and as well as stating the amount of VAT; businesses must input the amount of VAT being claimed. Clearly this is targeted around ensuring the recovery of VAT to the extent that it relates to taxable activities. HMRC's initial guidance stated more detailed guidance will be issued on this area.

A few other key points based on information provided during the demonstration:

- As hoped this facility will be available to agents
- Each business will now be able to have up to 26 open 'draft' claims (one for each Member State)
- Individual line items can be amended
- When supporting documents are uploaded as attachments these are not linked to a line item

As with all new software there are always improvements which can be made and it is a positive move by HMRC seeking feedback. HMRC are demonstrating their UK portal to a number of interested parties in order to highlight any improvements particularly on the ease of use. However HMRC have admitted any significant changes would not be made by launch. HMRC are confident their portal will be ready for businesses and agents to register in November 2009, ready for claims from 1 January 2010.

For HMRC's original guidance on the new refund procedure, click [here](#).

## **Reminder – Other changes from 1 January 2010**

### **Monthly ESLS for goods**

Whilst most of the attention has been focused on the new requirement for ESLs for services changes were also made to the existing rules on ESLs for goods. These changes were confirmed in the Budget (click [here](#)). Whilst the UK secured monthly ESLs for services the same package of measures now require monthly ESLs where the value exceeds £70,000 per quarter. Furthermore the time limits put forward for services of 14 days for paper and 21 days for electronic submission will also apply to goods. Currently ESLs can be calculated quarterly and submitted 42 days after the period end.

### **Changes to TOMS including the withdrawal of the opt out for business to business supplies from 1 January 2010**

The VAT Package and change of rate are not the only changes happening with effect from 1 January 2010. HMRC announced earlier this year in Brief 27/09 (click [here](#)) a number of changes to TOMS including the opt out provision for business to business supplies. This was the result of the Commission reviewing the definition of 'the traveller' and putting pressure on the UK to change its domestic VAT legislation so that it is in line with other EC Member States. Historically, corporate travel suppliers who were either acting as principals or as undisclosed agents could opt out of the TOMS and account for VAT in the normal way; issuing VAT invoices to their corporate clients. Their client could then recover related input tax subject to normal rules. However, this 'opt out' provision will be removed from 1 January 2010.

This will result in corporate travel suppliers that act as principals or undisclosed agents in the supply of designated TOMS supplies not being entitled to charge VAT in the normal way on a VAT invoice but will be required to account for VAT under the TOMS (which precludes the issue of VAT invoices). This will result in the client paying the same amount to the corporate travel supplier but the client will not be eligible to deduct any input tax in relation to those transactions.

Effectively this will result in the corporate customers suffering a cost with effect from 1 January 2010 equivalent to 17.5 percent of the travel services procured through such suppliers. Those corporate travel suppliers that fail to act will run the risk of their clients either procuring travel services directly from source providers or the clients moving to other travel providers that facilitate travel services under a pure agency arrangement.

If you feel you will be impacted by this change, please contact Richard Vivash (01908 84 4808) or James Prince (01223 58 2027).

## Other News

### OECD Lucerne VAT Conference - Communiqué available: Increasing Importance of Indirect Tax

The High Level VAT Conference was held in Lucerne on 9 to 10 September 2009, bringing together senior tax policy officials from 25 OECD countries, the European Commission and five other economies. The OECD has released a Communiqué which recognises increasing importance of indirect tax.

Click [here](#) to access the Communiqué.

### OECD Information Note on Developments in VAT Compliance Management

The OECD has published an Information Note on 'Developments in VAT Compliance Management'. It has been prepared to assist member revenue bodies achieve improved compliance with their VAT systems by sharing knowledge of recent developments in selected countries (i.e. Australia, Austria, Canada, Ireland and the UK), particularly in relation to their overall risk management approach.

Click [here](#) to access the Information Note.

### Changes to treatment of second hand vehicles in Ireland

The Department of Finance in Ireland announced on 14 September the introduction of a new VAT Margin Scheme on second-hand cars. Under the Margin Scheme, dealers will account for VAT on their profit margin, that is, on the difference between the cost of acquiring the car and its reselling price. This will apply to all second-hand cars purchased and resold on or after 1 January 2010.

In 1994, instead of adopting the Margin Scheme introduced under the EU Directive then, Ireland negotiated a derogation in the form of the current Special Scheme, which allows a dealer to reclaim the notional or residual VAT in the price of a car on acquisition. Introducing the VAT Margin Scheme will bring Ireland into line with other Member States.

Click [here](#) to read the press release from the Department of Finance.

## In the Courts

### Compound Interest Project decision released

In last weeks edition we brought you the late breaking news of the first Upper Tier Tribunal in *John Wilkins (Motor Engineers) Limited & Others*, known as the 'Compound Interest Project' (CIP). The Upper Tribunal followed the decision in the *VIC GLO* in finding that taxpayers are entitled to be paid compound interest where VAT has been paid in breach of Community Law. However they did not accept that a claim could be brought under the terms of s78 VATA 1994.

In their view s78 only allows for a payment of simple interest, and the correct way to recover compound interest on VAT paid in breach of Community Law is by means of a common law claim. Businesses should consider issuing claims in the High Court in order to protect their position and also lodging appeals in the Tax Tribunal within 30 days of a rejection or the payment of simple interest.

For more details of the case, click [here](#) to read the alert issued last week. If you think you may be impacted by the case or wish to discuss the potential implications please contact your normal KPMG advisor.

To read the case in full click [here](#).

## UK Cases Update

Following the first decision in the new Upper Tribunal we can report on a number of other cases awaiting hearing at the Upper Tribunal.

### Steven Lunn – HMRC appeal

Steven Lunn was successful at the initial Tribunal who overturned HMRC's decision not to accept the zero rating of the supply of building works under VATA 1994 Schedule 8 Group 6 Item 2. The appeal was not by the supplier of the services but unusually the recipient of the services Steve Lunn who incurred and suffered the VAT cost on the supplies. The original Tribunal looked at the conditions for zero rating under VATA 1994 Schedule 8 Group 6 Item 2 and found the condition of separate use was not prohibited by the terms of the planning. To read the original tribunal click [here](#).

### Mithras (Wine Bars) Ltd – Taxpayer appeal

Mithras (Wine Bars) Ltd are appealing against part of their First Tier Tribunal decision. Whilst part of their original appeal was allowed, HMRC's assessments on the zero/standard rated split of takeaway/eat in food on a number of delis and bars were found to be in best judgment. To read the original tribunal click [here](#).

### Plymouth Marine Laboratory – Taxpayer appeal

Plymouth Marine Laboratory are appealing against their Tribunal decision which found the services they received from a company to which they had out-sourced the operation of its ships and certain services were zero-rated under VATA 1994 Schedule 8 Group 6 Item 1. The Tribunal found the vessels were not chartered back to Plymouth Marine Laboratory and the suppliers services were not 'rendered under charter' and did not fall within zero rating. To read the original tribunal click [here](#).

## ECJ Diary

This week's case:

**Thursday 24 September 2009**

### Hearing Terex Equipment, FG Wilson (Engineering) and Caterpillar C-430/08 & C-431/08

This combined case concerns HMRC's challenge that the use of an incorrect Customs Processing Code creates a Custom debt. Full background on this case can be found in the *F G Wilson (Engineering) Ltd & Caterpillar EPG Ltd* Customs Tribunal which agreed a reference to the ECJ was necessary back in January 2008. To read the Tribunal reference click [here](#). To read the questions referred click [here](#) and [here](#).

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