



KPMG's Indirect Tax Update

TAX

Highlights

Do not be fooled by the changes announced to duties for goods imported by post. The increase in the de minimis limit from £18 to £105, which applies from December 2008 only applies to Customs duty. The old limit remains for import VAT and excise duty, leading to the strange situation of some imports of dutiable goods being duty free but subject to VAT. It also means that doing your Christmas shopping on line and ordering goods from the US will not be as cheap as it might have been, if the import VAT threshold had also increased to £105 per consignment. Of course bricks and mortar retailers in the UK already complain that the £18 import VAT limit is distortive and hits their trade as people order DVDs/CDs/ vitamins and contact lenses from the Channel Islands rather than going to their local High St, so there would have been an uproar if it had gone up by that sort of amount.

Would you be happy to just pay standard rate VAT on everything apart from those items that the Directive specifies should be exempt. That is to say get rid of the zero rate and reduced rates? A think tank has come up with this suggestion, opining that the extra revenue raised could be used to mitigate the impact this would have on the poorest sectors of society. Of course as VAT advisers we have a vested interest in the matter, but we cannot see giving up our hard fought battle for zero rates can ever be the right way to proceed.

In a coincidence worthy of the 'X-files' we were only talking about school uniforms for very overweight (the word obese is now frowned upon as hurtful apparently) children the other week and now here we have a Tribunal case on it. The appellant was unsuccessful in arguing for zero rating for uniform which though sold to 11 year olds starting secondary school, had not been adapted to fit the shape of younger children and was big enough to be worn by 14 year olds.

The other Tribunal cases of note this week concerned whether a business/ non-business method is a binding contract with HMRC (it isn't) and a look at the liability of the very popular LighterLife weight loss service. This involves the supply of foodpacks (meal replacements) and counselling services supplied for a single fee paid weekly. In contrast to *Weight Watchers* the Tribunal concluded there was a mixed standard rate and zero rate supply and the fee should be apportioned. This case is interesting for its full analysis of the meaning of mixed and composite supplies. *Levob* is cited again to see if the elements are dissociable, but the Tribunal declined to look at the customer's subjective expectations about what he/she thought they were receiving, (many thought they were just buying the food and paying nothing for counselling), and applied an objective approach. The documentation did not suggest the counselling was free.

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The comment which gave us pause for thought however was the conclusion that “if a single composite supply which comprises elements which on their own could be both standard and zero-rated would otherwise be treated as wholly zero-rated, it should not be treated as a single zero-rated supply, but standard rated to the extent of the standard rated components. Thus if the supply of the Appellant’s support services were ancillary to the supply of the foodstuffs, then zero-rating would apply only in relation to the element comprised of the food packs”. This is obiter as the final conclusion was actually that there was a mixed supply, not a composite one, but in any case we cannot see how it can be right as the Chairman was applying the specific rules for caravan contents supplied with a caravan (*Talacre Beach* case) to other supplies, and the law does not envisage this.

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

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

From the Tax Authorities

Revenue & Customs Brief 36/08 - VAT Treatment of Charity Challenge Events

Click [here](#) to access the brief announces HMRC’s revised guidance on Charity Challenge Events, including those that qualify for the VAT Charity Fundraising Exemption.

Changes to the de minimis limits to Customs duty for goods imported by post

Click [here](#) to access the document, which provides information on custom duties on imports via post/ shopping on the internet.

UK News

Institute for Fiscal Studies study recommends that standard rate of VAT should apply to everything

A leading economic think tank has suggested, as part of a wider review of tax system reform by the Institute for Fiscal Studies, that applying standard rate VAT to everything that is currently zero or reduced rated would raise enough revenue to increase means tested benefits and tax credits for lower income families by £12bn and cut taxes by £11bn. This could compensate the poor for the extra cost of paying more VAT on essentials.

EU News

Green paper on market-based instruments: the summary report

Click [here](#) to view the summary report on taxation-related aspects of the consultation.

New Declaration forms

Click [here](#) to view new forms for declaring cash in the Czech Republic - Common Declaration Form available in more non-EU languages.

In the Courts

Forsters School & Leisurewear Limited (Forsters) v HMRC – Unadjusted School uniform exceeding allowed sizes is standard-rated

Forsters is a clothing retailer which specialises in school uniforms, which are normally zero rated subject to the criteria laid out in Public Notice 714. However HMRC argued initially that three categories of clothing were standard rated, as they all exceeded the cut off measurements for zero rating set out in the notice. The garments were intended for overweight children in primary, middle and secondary school aged 14 and under.

HMRC subsequently accepted that the first category, primary and middle school uniforms, were zero rated, as they were only sold to children attending schools that only catered for pupils under 14. They were also willing to discuss the second category, secondary school garments which had been modified to better fit children (i.e. have smaller collars and cuffs) with Forsters.

The main issue concerned the third category, secondary school uniforms that had not been altered. While they were sold at induction evenings to parents of children who were 11 years old, as these garments were standard sizes for children 14 and over, and as were not adapted for younger children (and thus could be worn by children 14 and over), they were ruled to be standard rated.

Please click [here](#) to read the decision in full

David Baxendale Ltd v HMRC – LighterLife product is mixed supply of food and support services

This was a question over the VAT liability of the fees paid by participants in the LighterLife weight loss programme. Participants pay a single fee for meal replacements. Counselling services and support are also provided. The appellant argued the counselling was free or ancillary to the food and hence there was a single zero rate supply of food. HMRC argued people paid for the counselling and in fact there was a single supply of weight loss support which was standard rated (using the same approach they had successfully argued in *Weight Watchers*).

However, in contrast to *Weight Watchers* the Tribunal decided that in this case there were two supplies, one of zero rated food and one of standard rated counselling and the fee covered both with two thirds being zero rated. This case raises some interesting thoughts on the ever popular supply question. Firstly, the Tribunal was content that the food could be separated from the counselling services, that both elements were useful to the customer and both served different objects and needs as well as being mainly supplied at different times as most of the counselling was provided after the supply of food, when the person moved on to maintenance and started eating ordinary food again. Consuming just the foodpacks meant the weight was lost, the counselling ensured it stayed off. Secondly, the Tribunal was content that objectively speaking, the customers paid for both elements, even if they thought they didn't.

Please click [here](#) to read the decision in full

Oxfam v HMRC– business/non-business method not a binding contract.

In a decision released this week the London Tribunal Centre rejected an appeal by Oxfam for repayment of approximately £2.9m of VAT. This case followed the successful *Church of England Children's Society* case and had been reported in the specialist charity press as potentially providing a "VAT rebate of up to £100 million for the sector" if successful. Although this outcome is clearly disappointing for Oxfam, it is clear from the judgement that the principles established in the *Church of England Children's Society* case remain applicable. Oxfam had already received the amount of its Children Society claim that was deductible under the terms of the business/non-business method as it was at the time the fund raising VAT was incurred. Where the appeal foundered was in the attempt to increase the claim significantly by amending the business/non-business method retrospectively to reflect the fact the fund raising costs ceased to be non business and became residual as a result of the *Church of England Children's Society* case (the method was expenditure based). HMRC successfully argued this amendment led to the unfair result of too much of the fund raising VAT being deemed to relate to Oxfam/s business activities, as Oxfam's pledge was that 85p of every £1 raised went to fight poverty, and consequently they did not have to accept the increased claims as the method was not a binding contract. Any charities that have incurred VAT on fund raising costs, and that have not yet made a claim following the *Church of England Children's Society* case should consider doing so as this Oxfam decision is no barrier, and the Fleming case means claims for periods longer than the normal three years can now be made (until 31 March 2009).

If any charity wishes to discuss the potential for a claim please contact your usual Indirect tax contact or either Graham McKay (020 7311 2606) or Gareth Blower (01293 652768).

Please click [here](#) to read the decision in full

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