

Chapter 1: Overview..... 2

Chapter 2: Registration and deregistration..... 3

Chapter 3: Recovering VAT 4

Chapter 4: Business non-business 7

Chapter 5: Exempt activities 10

Chapter 6: Zero and reduced rates 14

Chapter 7: Fundraising..... 16

Chapter 8: Property..... 17

Chapter 9: International aspects of VAT 21

Chapter 10: VAT special schemes 25

Chapter 11: Other topics..... 29

Chapter 12: Operational aspects 31

Chapter 14: Further information 35

Chapter 1: Overview

December 2010 20% standard rate

The standard rate of VAT on will rise to 20% on 4 January 2011.

December 2008 15% standard rate

The standard rate of VAT was reduced from 17.5% to 15% between 1 December 2008 and 31 December 2009.

Chapter 2: Registration and deregistration

November 2010 Schmelz – ECJ C-97/09

<http://www.bailii.org/eu/cases/EUECJ/2010/C9709.html>

VAT registration thresholds. Issue: Can EC states restrict exemption from registration on the basis of small turnover to businesses established in the state? Answer: Yes. Issue: is the turnover limit determined by turnover in the state or throughout the EC? Answer: Turnover in the state of establishment only.

April 2010 Registration and deregistration thresholds

From 1 April 2010, the VAT registration threshold is increased from £68,000 to £70,000 and the deregistration threshold from £66,000 to £68,000

April 2008 Registration and deregistration thresholds

The VAT registration threshold is increased to £67,000 and the deregistration threshold to £65,000. Both changes took effect on 1 April 2008.

Chapter 3: Recovering VAT

December 2010 Airtours Holidays Transport Ltd – Upper Tier Tribunal UT 404

[http://www.tribunals.gov.uk/financeandtax/Documents/decisions/HMRC v Airtours.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/decisions/HMRC_v_Airtours.pdf)

Borrower viability report for bank undertaken by PWC but paid for by the borrower. Can the borrower deduct the associated input VAT? Answer: No. The supply is to the bank, not the borrower

November 2010 Business entertainment of overseas customers

<http://www.hmrc.gov.uk/briefs/vat/brief4410.htm>

HMRC now accept VAT can be recovered on basic business entertaining for overseas customers at office meetings and external meetings and events. However where the entertaining goes beyond basic food and refreshment or comprises general entertainment and hospitality such as golf days, track days, trips to sporting events, evening meals and trips to night clubs, recovery will not generally be allowed. HMRC do not accept VAT recovery for overseas business contacts other than customers (eg suppliers)

November 2010 Combined business / non-business and partial exemption methods

<http://www.hmrc.gov.uk/briefs/vat/brief47010.htm>

This is HMRC's consultation on legislation for the incorporation of non-business use of capital items into the capital goods scheme as required by the EC Technical Directive. The consultation runs to 30 November, with the legislation taking effect from 1 Jan 2011.

HMRC are also taking the opportunity to allow PE special methods to include non-business activity. VAT attributable to non-business activity is treated as exempt input VAT for the purposes of the PESH. However if a combined method is used the de-minimis tests do not apply.

PESH are provided for by s102 of the VAT Regulations 1995 ("regulation 102 methods"). The draft legislation provides that regulation 102 methods can be used for business / non-business apportionments; such methods must be in writing and approved or directed by HMRC and the annual adjustment must take account of non-business VAT. However the de-minimis rules are blocked in such situations.

July 2010 Partial exemption frameworks for housing associations and HEIs

<http://www.hmrc.gov.uk/menus/partial-exemp-frame.htm>

The PE framework for housing associations was agreed with the NHF and its Scottish, Welsh and N Irish equivalents. The version date is April 2010.

April 2010 Changes to the de-minimis rules

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageVAT_ShowContent&propertyType=document&id=HMCE_PROD1_030224

The following simplifications will apply from 1 April 2010. Two new de-minimis tests are being introduced ("test one" and "test two"). These will run alongside the existing de-minimis test. If a business meets any of the tests it is de-minimis for a VAT period or year.

In addition if a business was de-minimis in the previous year, it can assume it is de-minimis in each period of the following year subject to correction at the annual adjustment. This is subject to the condition it expects to incur at most £1 million input tax.

The two new tests are:

1. Total input tax incurred is no more than £625 per month on average and the value of exempt supplies is no more than 50% of the value of all supplies
2. Total input tax incurred less input tax directly attributable to taxable supplies is no more than £625 per month on average and the value of exempt supplies is no more than 50% of the value of all supplies

The idea is that test 1 is applied first (as this is the simplest to apply). If that fails, test 2 is applied and if that fails, the normal de-minimis test is applied.

The conditions for assuming de-minimis on a provisional basis during the following year are:

- The business must pass the de minimis test for its previous partial exemption year
- The business must consistently apply the annual test throughout any given partial exemption year, and
- The business must have reasonable grounds for not expecting to incur more than £1million input tax in its current partial exemption year

In the above:

- "total input tax" excludes blocked input tax (eg on entertaining) and also VAT incurred on non-business activities
- 'The value of all supplies' includes taxable supplies made in the UK, supplies made outside the UK which confer the right of recovery (regulation 103 supplies) and exempt supplies. It presumably excludes non-business income
- 'Input tax directly attributable to taxable supplies' is input tax on costs that are used or to be used exclusively in making taxable supplies. For example, input tax on the cost of goods for resale.

January 2010 Updated partial exemption framework for Higher Education Institutions

<http://www.hmrc.gov.uk/menus/frame-heijan10.pdf>

The revised PE framework for higher education institutions was agreed with British Universities Finance Directors' Group (BUFDG) and the Higher Education Funding Council for England (HEFCE). The latest version is January 2010

December 2009 Oxfam EWHC 3078 (Ch)

<http://www.bailii.org/ew/cases/EWHC/Ch/2009/3078.html>

This was a simultaneous appeal against the VAT Tribunal's decision (September 2008) and a judicial review claim on the basis of breach of Oxfam's legitimate expectation based on an assurance given by HMRC. Both claims were rejected by the High Court.

October 2009 HMRC policy on VAT recovery by theatres following Garsington Opera

<http://www.hmrc.gov.uk/briefs/vat/brief6209.htm>

HMRC guidance on when production costs by theatres making taxable and exempt supplies will be residual.

October 2009 Skipton Building Society – First Tier Tribunal TC00146

<http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00146.html>

The Skipton VAT group makes taxable supplies of estate agents fees and exempt supplies of mortgage services. The dispute was whether VAT on newspaper adverts for properties placed by Skipton was attributable to Skipton's taxable supplies (and so recoverable in full) or attributable to taxable and exempt supplies and so residual. The tribunal found that:

- Where an advert refers to mortgage services, the VAT on the advert is attributable to the taxable and exempt supplies
- Where an advert refers only to house sales, the VAT is attributable only to the taxable supply

April 2009 Changes to the standard partial exemption method

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_029373

HMRC have announced four changes to the standard partial exemption method with effect from 1 April 2009:

1. Allow provisional in-year recovery rates
2. Allow early annual adjustment
3. Allow use-based methods for new partly exempt businesses subject to no exempt input tax in the previous VAT year
4. Widening the scope of the standard method to include certain foreign and specified supplies

The first three changes are optional and businesses can benefit from them without seeking approval from HMRC. Change four is compulsory and affects businesses that make:

- Supplies of services to customers outside the UK
- Certain financial supplies such as shares and bonds
- Supplies made from establishments located outside the UK

April 2009 Input tax claims on business entertainment provided to overseas clients

<http://www.hmrc.gov.uk/news/ent-claim-input-tax.htm>

HMRC are currently reviewing the input tax treatment of business entertainment provided to overseas clients in the light of a recent European Court of Justice (ECJ) judgment in the joined case of Danfoss and AstraZeneca (Case-371/07).

October 2008 HMRC framework for Higher Education Institution Partial Exemption Special Methods

<http://www.hmrc.gov.uk/avoidance/pe-frame-educ.pdf>

The framework document provides guidance on formulating special partial exemption methods for higher education institutions (HEIs). The framework was prepared by HMRC in co-operation with the British Universities Finance Directors' Group and the Higher Education Funding Council for England. The framework is updated regularly and this is the October 2008 version.

July 2008 Oxfam case – non-business methods

[VAT Tribunal case V20752: Oxfam](#)

This case concerned the impact of the high court judgement in [Church of England Children's Society](#) (see Practical Guide to VAT p50) on an expenditure based business / non-business method. **Result:** approved business / non-business methods are not legally binding. When considering the impact of the Children's Society case on fundraising costs and business / non-business methods, it is necessary to consider how the fundraised income is used.

Chapter 4: Business non-business

December 2010 HMRC revised policy - Business samples

<http://www.hmrc.gov.uk/briefs/vat/brief5110.htm>

Following the ECJ's ruling in EMI (C-581/08) (see November 2010) HMRC has announced that UK law restricting VAT recovery to the first sample provided will be amended in Finance Act 2011.

In the meantime HMRC will allow claims for overpaid output. HMRC state:

The ECJ ruling means that some samples, treated as taxable supplies under UK law, should not have been taxed. Consequently, there is a right (limited by 'capping' legislation) to recover overpaid VAT. Similarly, taxpayers may now rely on the terms of this ruling when preparing VAT returns.

In the majority of cases, where VAT has been accounted for on 'samples' under the existing UK legislation, that is, where more than one example of a particular product was supplied to the same person, it is anticipated that an overpayment of VAT will have occurred.

November 2010 LMIUK (Nectar scheme) & Baxi Group – ECJ C53/09 & C55/09

<http://www.bailii.org/eu/cases/EUECJ/2010/C5309.html>

Third party consideration tests. Customer reward points type schemes – where customers do not pay any extra to earn points. Issue: redeemers are the parties that supply the reward goods / services to customers. Are payments from scheme operators to redeemers payment for services supplied by the redeemer to the operator or third party consideration for a supply of goods and services by the redeemer to the customer? Answer: at least partly third party consideration for the supply from the redeemer to customer. If retailers also pay the operator for points issued, that also is at least partly third party consideration for the reward goods / services.

November 2010 EMI Group – ECJ C581/08

<http://www.bailii.org/eu/cases/EUECJ/2010/C58108.html>

Compatibility of UK law with EC law on samples and small business gifts. UK law is wrong for samples in restricting exemption to the first sample only. The status of the recipient of the samples does not matter. However UK law is OK in restricting small business gifts to £50. Impact: businesses that have distributed multiple samples to the same person and accounted for output tax on those samples may now be able to recover the VAT, subject to the 4 year cap and unjust enrichment.

August 2010 Lennartz & changes to the capital goods scheme

http://www.hm-treasury.gov.uk/d/consult_finbill_non-business_use_of_business_assets_etc..pdf

The government has released draft legislation for limitation of the Lennartz scheme and incorporation of VAT on capital items in respect of non-business use into the capital goods scheme ("CGS") with effect from 1 January 2011.

March 2010 Graphic Procede ECJ C-88/09

<http://www.bailii.org/eu/cases/EUECJ/2010/C8809.html>

Are supplies of photocopies supplies of goods or services? Answer: goods usually but it depends on what additional services the customer requires

January 2010 HMRC policy on Lennartz

<http://www.hmrc.gov.uk/briefs/vat/brief0210.htm>

Following the VNLTO case (see below) HMRC have announced they regard Lennartz as (generally) not applying to mixed taxable / non-business use but only to mixed taxable / private use.

Revised policy From 22 January 2010, Lennartz accounting will only be available where:

- (a) the goods are used in part for making supplies in the course of an economic activity that give a right to input VAT deduction (broadly, taxable supplies, supplies that would be taxable if made in the UK, or certain financial and insurance supplies to non-EC customers); and
- (b) they are also used in part for the private purposes of the trader or his staff, or, exceptionally, for other uses which are wholly outside the purposes of the taxpayer's enterprise or undertaking.

March 2009 ECJ - VNLTO C515/07

<http://www.bailii.org/eu/cases/EUECJ/2009/C51507.html>

VNLTO was a VAT registered association of Dutch farmers set up to promote their interests. Its activities in promotion of the general interests of members were accepted as being outside the scope of VAT, not being supplies for consideration. However it also supplied services to individual members which were accepted as taxable. VNLTO purchased goods and services which were used for both types of activity. It sought to apply Lennartz to claim the VAT incurred upfront and account for output VAT on the non-business use. The Dutch court asked the ECJ if Lennartz applies not only to capital goods but also to other goods and services.

The VAT directive provides that the following shall be treated as supplies of services for consideration:

- (a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the [VAT] on such goods is wholly or partly deductible
- (b) supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business

The ECJ drew a distinction between use of goods and services for non-economic activities (such as the general services for members) and “use for purposes other than those of the business”. Given that the general services for members are the main purpose of the association, they cannot be considered purposes other than those of the business.

Result: the ECJ has drawn a distinction between private use and non-economic use. Lennartz only applies to mixed taxable / private use, and does not apply to mixed taxable / non-economic use. The UK's use of the term “business” to substitute for the EC term “economic” confuses the issue.

December 2008 HMRC policy on penalties in non-local authority car parks

In [Revenue & Customs Brief 57/08](#) HMRC have revised their policy on the VAT status of penalties charged in non-local authority car parks. Certain penalties and excess charges which HMRC have to date regarded as further consideration for a taxable supply of parking are now regarded as outside the scope of VAT.

October 2008 Bath Festivals Trust – VAT status of funding agreements

[VAT Tribunal case V20840: Bath Festivals Trust](#)

This was a dispute over whether funds received by the Trust from Bath Council were consideration for a supply of services or a grant. **Result:** when considering the VAT status of a funding agreement between a charity and a statutory body it is important to consider who initiated the agreement, who set the scope and terms of the services provided and if the funder would otherwise provide the services itself.

May 2008 Quarriers cases – non-business status of fees charged to local authorities

[VAT Tribunal case V20660: Quarriers v Revenue & Customs](#)

[VAT Tribunal case V20670: Quarriers v Revenue & Customs](#)

These were two cases involving a Scottish care charity. The issue in both cases was whether activities funded mainly by fees charged to local authorities were business or non-business. **Results:** these two cases reinforce the [Donaldson's College judgement](#). In all three cases the following factors have indicated that a fee charging service is non-business if:

- It is undertaken by a charity in pursuit of its objects, and
- The service is unique or not in competition with others, and
- Over the long term, fees cannot be set at levels to ensure the service at least breaks even and the service has to be subsidised from other resources. The second Quarriers case suggests that the loss can be determined on a full cost recovery basis rather than just on the basis of direct costs

Chapter 5: Exempt activities

November 2010 Ethical Trading Initiative Ltd - First Tier Tribunal FTT 690

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00690.html>

Sch 9 Gp 9 item 1(e) exemption for political, philanthropic etc bodies. Issue: does the fact that commercial members derive commercial advantage from their membership prevent ETI's member services from being referable "only to its aims"? Answer: No. the test is what are the aims of the organisation, not the motivation of members in receiving them.

November 2010 Axa UK (Denplan) – ECJ C-175/09

<http://www.bailii.org/eu/cases/EUECJ/2010/C17509.html>

Financial services. Issue: are fees for handling DD payments between customers and suppliers exempt financial services? Answer: no - they are std-rated as a debt collection service.

July 2010 HMRC announcement on ECJ Canterbury Hockey ruling

<http://www.hmrc.gov.uk/briefs/vat/brief1510.htm>

HMRC announcement that they accept the ECJ's ruling in Canterbury Hockey Club C-253/07. From 1 September 2010 supplies to corporate bodies and unincorporated associations meeting the conditions (see below) must be exempted. There is no requirement to make adjustments in respect of supplies made prior to this date. However, any organisations wishing to implement the judgment before 1 September 2010 (and start exempting affected fees from an earlier date) is entitled to do so.

April 2010 Postal services

The budget announced that from 31 January 2011 VAT will be applied at the standard rate to certain postal services provided by the universal service provider (Royal Mail).

March 2010 HMRC policy on provision of health professionals by employment businesses

<http://www.hmrc.gov.uk/briefs/vat/brief1210.htm>

This brief restates HMRC policy on the VAT status of supplies of health and care staff by employment businesses. The key issue is if the worker comes under the direction and control of the customer. If they do it is a supply of staff, if they don't it is a supply of the underlying service, which in many situations with health professionals will be exempt.

The brief sets out HMRC's nursing agency concession and HMRC policy domiciliary care and local authority welfare contracts.

February 2010 Eulitz – ECJ C 473/08

<http://www.bailii.org/eu/cases/EUECJ/2010/C47308.html>

Article 13(1)(j) meaning of "tuition covering school or university education" and "tuition given privately".

September 2009 VAT exemption of psychologists' services

<http://www.hmrc.gov.uk/briefs/vat/brief4309.htm>

With effect from 1 July 2009 practitioner psychologists are regulated by the Health Professionals Council meaning that any supplies of medical care they make became exempt from VAT from that

date. Practitioner psychologists come under seven domains: clinical, counselling, educational, forensic, health, occupational, and sport/exercise. Psychologists who work purely in academic research and experimental psychology and who do not offer services to the general public are excluded from regulation meaning that there will be no change in the VAT treatment of their services.

September 2009 VAT recovery by local authorities in respect of voluntary aided schools

<http://www.hmrc.gov.uk/briefs/vat/brief5309.htm>

This is an HMRC brief that sets out a revised policy on VAT recovery by local authorities on expenditure relating to capital works at voluntary aided schools.

July 2009 Garsington Opera Ltd UKFTT 77 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00045.html>

This was a dispute over the recoverability of VAT incurred on opera production costs broadly similar to the Mayflower case. Garsington Opera Ltd (“GOL”) is a registered charity that sells exempt tickets to operas that it produces. HMRC ruled that the VAT incurred on opera production costs was attributable exclusively to the exempt supply of tickets and so irrecoverable. GOL claimed the VAT on production costs was also attributable to its taxable supplies and so residual. The tribunal found for GOL and comprehensively rejected all HMRC’s arguments.

July 2009 Keele University Students Union UKFTT 114 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00082.html>

The issue here was whether the union was an eligible body for the purposes of the cultural exemption, Keele claiming it was and HMRC that it was not. This affected the VAT status of entrance tickets to events put on by the union.

The union had a president and three vice-presidents who took decisions of last resort. There were paid bursaries of £15,345 per annum which were subject to income tax and national insurance. The tribunal found this prevented the union from being an eligible body for the cultural exemption.

April 2009 VAT treatment of unlimited access to leisure trust facilities

<http://www.hmrc.gov.uk/briefs/vat/brief1309.htm>

HMRC has amended its interpretation of the law on the VAT treatment of membership subscriptions allowing unlimited access to leisure facilities provided by an “eligible body”. Previously HMRC took the view that where the subscription provided access to a mix of exempt and standard-rated facilities, the subscription was standard-rated. Following the Court of Appeal’s comments in the Weightwatchers UK case, HMRC now consider the status follows that of the predominant reason the typical member joins – which will usually be the exempt sports facilities. Supplies made by commercial organisations are not affected and remain taxable at the standard rate. The revised advice supersedes the advice given in Revenue & Customs Brief 50/07.

April 2009 HMRC policy on retrospective claims under ESC 3.35 (apportionment of subscriptions)

<http://www.hmrc.gov.uk/briefs/vat/brief0609.htm>

HMRC have announced they will not accept claims for overpaid VAT on the basis of retrospective application of ESC 3.35 (treating subscriptions to non-profit bodies as a multiple supply).

January 2009 RM Education PLC – VAT Tribunal V20911

<http://www.bailii.org/uk/cases/UKVAT/2009/V20911.html>

Exemption of examination services – meaning of examination services in schedule 9, group 6 note 4 “other services provided with a view to ensuring educational and training standards are maintained”

January 2009 Heating and Ventilating Contractors Association - VAT Tribunal V20887

<http://www.bailii.org/uk/cases/UKVAT/2008/V20887.html>

Meaning of trades union and civic organisation in Art 132(1)(l) and sch 9 group 9 item 1

January 2009 HMRC policy following Rank Group VAT Tribunal cases

<http://www.hmrc.gov.uk/briefs/vat/brief6308.htm>

VAT liability of mechanised cash bingo and gaming machine takings.

March 2008 VAT status of education supplied by university trading companies

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_PROD1_030238

HMRC have announced a change of policy on the VAT status of education supplied by university subsidiary companies.

Schedule 9 group 6 note 1(b) exempts education when supplied by “a UK university, and any college, institution, school or hall of such a university”. HMRC’s previous policy was to treat only those university companies that have been formally approved by the parent university as a college, institution, school or hall of the university as potentially falling within note 1b.

HMRC have now reviewed their policy and have concluded that in most cases where a university trading company is providing education it is acting as if it were a college institution, school or hall of a university. The effect of this is that the company will fall within note 1b and so its supplies of education will be exempt.

The brief lists 15 factors to consider when determining whether a university trading company is an eligible body for VAT purposes.

December 2008 Stichting CBIT case – scope of the exemption for shared services

[ECJ case C-407/07: Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing](#)

This is a Dutch case concerning the scope of the exemption in Article 13A(1)(f) of the Sixth Directive (now Article 132(1f) of Directive 2006/112) for “shared services”. This exemption is not currently implemented into UK law though UK businesses can seek to invoke direct effect to apply the exemption. **Result:** providing all the other conditions in Article 13A(1)(f) are met, services supplied by the group to just one or a small group of members qualify for exemption.

October 2008 ECJ ruling in Canterbury Hockey Club

[ECJ case C-253/07: Canterbury Hockey Club & Anor](#)

Result: the UK sporting exemption is currently restricted to services provided to individuals. The decision shows this restriction is too narrow and the exemption must extend to services provided to corporate bodies and unincorporated associations if:

- The services are closely linked and essential to sport, and
- They are supplied by non-profit-making organisations, and

- Their true beneficiaries are persons taking part in sport

Chapter 6: Zero and reduced rates

December 2010 Restriction on zero-rating of printed matter and other anti-avoidance

http://www.hm-treasury.gov.uk/press_68_10.htm

Draft legislation will be published on 9 December 2010 to counter avoidance relating to the supply of services where arrangements have been made for the supply of printed matter that is ancillary to those services to be made by a different supplier. The VAT Act will be amended to withdraw zero rating from printed matter where it is ancillary to a differently rated service, and where, if the service and printed matter had been supplied by a single company, the printed matter would not have been zero rated. The legislation will come into force from the date of Royal Assent to Finance Bill 2011, following consultation on the detail.

November 2010 Furniture Finders of Winsford Ltd - First Tier Tribunal FTT 691

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00691.html>

Zero-rating of donated goods. Issue: Do non-charitable social enterprises qualify for zero rating of the sale of donated goods? Answer: No. the supplier must be either a charity or a “profits to charity person”.

July 2010 Zero-rating pay-per-click charity advertisements

<http://www.hmrc.gov.uk/briefs/vat/brief2510.htm>

This Revenue & Customs Brief explains HMRC’s revised policy on the VAT treatment of pay-per click (PPC) charity advertising on sponsored links and other associated services.

May 2010 West Country Vending Service Ltd UKFTT 124 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00435.html>

VAT status of sales from vending machines

February 2010 Andras Bokor FTT 322 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00265.html>

Zero-rating reliefs for disabled persons – also relevant to charities

September 2009 VAT free SMS messages

<http://www.themda.org/mda-press-releases/vat-waived-on-charity-text-message-donations.php>

The Mobile Data Association has announced that charitable donations sent to a dedicated short code will have the VAT waived for registered charities.

The new framework means charities of all sizes will be able to receive the VAT previously deducted for for donations sent via text message. In the past this has only happened for large national charitable events such as Comic Relief.

Mobile users can donate up to £10.00 by either sending a text message to a Short Code or by using Payforit, a recognised UK standard for mobile payments.

July 2009 Royal National Lifeboat Institution UKFTT 39 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00017.html>

VATA schedule 8 group 8 item 3 zero-rates the purchase, repair and maintenance of lifeboats, launching equipment, slipways, and equipment ordinarily used in lifeboats. However the VAT Directive appears to zero-rate a broader range of supplies for lifeboats (article 148 zero-rates the supply of services to meet the direct needs of a lifeboat). This case examined whether RLNI could zero-rate works not covered by the UK legislation such as works on lifeboat houses, cliff stabilisation works, channel dredging and crew facilities.

June 2008 extension of the reduced rate on smoking cessation products

The 5% reduced rate on the non-prescription sale of smoking cessation products such as patches, inhalators and gums will continue beyond the original cessation date of 30 June 2008.

March 2008 Friends of the Elderly case - zero-rating of architects' fees in installing a lift

[VAT Tribunal case V20597: Friends of the Elderly](#)

The issue in this case was whether architects' fees relating to the installation of a lift in a care home qualify for zero-rating under item 17 group 12 schedule 8: "The supply to a charity providing a permanent or temporary residence or day-centre for handicapped persons of services necessarily performed in the installation of a lift for the purpose of facilitating the movement of handicapped persons between floors within that building." **Result:** architects' and other professional services including feasibility studies incurred in installing lifts in care homes, day centres etc can be zero-rated if the installation could not have been achieved without them.

January 2008 Gables Farm Dogs and Cats Home case - zero-rating the sale of rescued animals

[VAT Tribunal case V20519: Gablesfarm Dogs and Cats Home](#)

The case concerned whether or not the sale of certain dogs by a charitable animal shelter could be zero-rated as the sale of donated goods. Many dogs were brought into the shelter by local authority animal wardens under a contract with the local authority. **Result:** HMRC announced in [Revenue & Customs Brief 14/08](#) that they now accept the sale of animals in similar circumstances is zero-rated.

Chapter 7: Fundraising

July 2008 revised HMRC guidance on the VAT treatment of challenge events

HMRC have provided new guidance on the VAT treatment of challenge events. The guidance is in section 10 of [VAT Notice 701/1 Charities](#). The guidance states:

- Fund-raising events that include a package of both travel and accommodation, or bought-in accommodation, or more than two nights' accommodation from a charity's own resources, do not qualify for the fund-raising VAT exemption.
- If the charity insists that the participant makes a payment before allowing them to take part in the challenge event the charity will be making a supply for VAT purposes. The payment might consist of a registration fee, a deposit, and/or payment of a proportion of the target figure that the participant is aiming to raise through sponsorship
- However the amount is calculated, if the charity insist on payment before allowing the participant to take part then the charity is making a supply. That supply may be of a package to the participant (if the charity acted as a principal or undisclosed agent) or of agency services in selling the package/holiday for a specialist company who has put the event together (if the charity acted as a disclosed agent)
- A charity will be acting as a disclosed agent if:
 - Both the charity and the specialist company have agreed that the charity will act as the company's agent; and
 - The charity discloses the name of the principal (the specialist company), for example in the event terms and conditions and on all tickets issued; and
 - The charity is not taking any significant commercial risk in relation to the event (for example, the charity does not have any financial liability should something go wrong)
- If these agency disclosure conditions are not met (in which case the charity is acting as an undisclosed agent), or the charity acts as a principal, buying and selling the entire event or putting together the challenge event itself – buying travel, accommodation, itinerary, professional guides, etc. direct – then the charity must account for VAT using the Tour Operators' Margin Scheme.

The guidance provides examples of each scenario and a flow chart to help charities determine the VAT status of an event.

Chapter 8: Property

December 2010 Revised change of use rules

<http://www.hmrc.gov.uk/briefs/vat/brief4910.htm>

This is an announcement of a 4 week consultation period on alterations to the “change of use” rules. The “change of use” rules apply when a new building (or part of a new building) was zero-rated on the basis of intended use for a relevant charitable purpose (“RCP”) or a relevant residential purpose (“RRP”) and that use changes within 10 years of completion. At present there are two different adjustment mechanisms, one for where the building (or part) is sold or let and one for where occupation continues but use is switched to a non-qualifying use (eg for business purposes).

The draft legislation treats both scenarios as a deemed taxable supply (ie as for the existing rules on continuing occupation with a switch of use). From the date of implementation, any change in use will trigger a charge under the new rules rather than the old.

December 2010 Option to tax anti-avoidance relaxation – the 2% test

<http://www.hmrc.gov.uk/briefs/vat/5010-annexa.pdf>

Up to 2% ineligible occupation by a grantor or person connected to a grantor can be ignored. To apply from some point in 2011.

July 2010 Jennings UKFTT 49 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00362.html>

Scope of DIY builder’s scheme (section 35 VATA). Does it extend to holiday properties? Answer: yes Following this case HMRC have announced (Revenue & Customs Brief 29/10) they accept the DIY builder’s scheme applies to the construction of new holiday homes and the conversion of non-residential buildings into holiday homes, subject to the other scheme conditions being met. HMRC will accordingly accept claims where the certificate of completion was issued within four years and three months of the brief date – 15 June 2010.

July 2010 Withdrawal of ESC 3.29 and the new 5% de-minimis test

<http://www.hmrc.gov.uk/briefs/vat/brief2610.htm>

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageOnlineServices>ShowContent&propertyType=document&id=HMCE_PROD1_030535

On 1 July 2009 HMRC announced the withdrawal of ESC 3.29 with effect from 1 July 2010. ESC 3.29 allowed a building or part of a building to be considered “intended for use solely for a relevant charitable purpose” (“RCP”) if non-qualifying use (ie: business use) is below 10% as calculated by one of various prescribed methods.

HMRC will accept that business use is de-minimis if the building or part of a building is intended for use 95% or more for a qualifying purpose (ie: non-business use and/or use as a village hall or similarly). This is not a concession but HMRC’s interpretation of statute law and policy in respect of.

As a result the change of use test will apply. (If ESC 3.29 applies then the change of use test is waived).

May 2010 Cheltenham College Enterprises Ltd UKFTT 118 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00429.html>

The correct tests to apply to establish if a building is “substantially reconstructed”

March 2010 Option to tax changes

Technical changes to the option to tax legislation with effect from 1 April 2010.

- Occupation of minor parts of buildings (no more than 10 per cent of the total area) by persons that have provided finance for developments is now disregarded for the purposes of the option to tax anti-avoidance provision. A new sub-paragraph 15(3A) has been introduced into Schedule 10 and new tertiary legislation introduced, (see VAT Information Sheet 02/10 - Annex A).
- The conditions for revoking an option to tax during the 'cooling-off' period have been amended. The requirement that land must not have been used has been removed (Schedule 10 paragraph 23(1)(b)). The additional conditions set down in tertiary legislation have also been amended, (see VAT Information Sheet 02/10 - Annex B).
- The definition of 'relevant housing association' has been amended in Schedule 10 paragraph 10(3). The term 'registered social landlord' will be replaced from 1 April for England only with 'private provider of social housing' as defined by the Housing and Regeneration Act 2008. This consequential change ensures English housing associations continue to enjoy the same VAT reliefs as they do at present in common with housing associations in the rest of the UK. A similar change is also being made in Group 5 to Schedule 8 of the VAT Act 1994 where we are also taking the opportunity to update the reference for Scotland as well.

December 2009 HMRC policy on property service charges

<http://www.hmrc.gov.uk/briefs/vat/brief6709.htm>

- Service charges are part of a single rental supply if they are a condition of the lease
- By concession HMRC accept as exempt all mandatory service charges paid by the occupants of residential property.

This announcement follows the ECJ's decision in the case RLRE Tellmer C-572/07

October 2009 HMRC policy following Community Housing Association

<http://www.hmrc.gov.uk/briefs/vat/brief5709.htm>

July 2009 Withdrawal of ESC 3.29 – 10% concession for charity premises

<http://www.hmrc.gov.uk/briefs/vat/brief3909.htm>

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageImport_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_029657

Extra statutory concession 3.29 ("ESC 3.29") permits a charity to ignore minor non-qualifying use (ie: business use) and still issue a zero-rating certificate. The business use must be less than 10% as calculated by one of the prescribed methods set out in the ESC (time, headcount or floor area). ESC 3.29 will be withdrawn on 1 July 2010.

HMRC state that from 1 July 2010 on they will apply a revised interpretation of the term "solely" that incorporates an appropriate de-minimis margin. HMRC state:

The meaning of the term 'solely' will depend on the legal context in which it occurs and on the nature of the underlying transactions to which any particular piece of legislation is directed. The revised interpretation described above applies only to the construction of the phrase 'solely for a relevant residential or relevant charitable purpose' as used in the context of Groups 5 and 6 of Schedule 8, Group 1 of Schedule 9 and Part 2 of Schedule 10 to the VAT Act 1994.

In order to avoid unnecessary disputes in marginal cases, HMRC will accept that use is solely for a relevant charitable purpose if the relevant use of the building by the charity is 95% or more.

For this 5% test, use for a relevant charitable purpose does not have to be calculated using one of the three methods described in ESC 3.29. Any method may be used to calculate the qualifying use of the building, so long as it is fair and reasonable. Prior approval from HMRC for any method of calculation is not required. Charities will be able to apply the 5% test from 1 July 2009 if it suits them.

However, if a building is zero rated as a result of applying this new interpretation, there will be a change of use charge if it ceases to be eligible within ten years of the buildings completion. Impact on connected concessions

There are three connected concessions that will also be withdrawn on 1 July 2010:

- If a charity has relied on ESC 3.29 to issue a certificate then if the business use goes above 10% in the 10 years following the zero-rated supply, there is no “change of use” and the charity does not have to repay any of the VAT avoided.
- If a charity relied on ESC 3.29 to zero-rate part of a building, and within 10 years the business and non-business areas are switched around, the charity can ignore the change of use of the qualifying area subject to various conditions.
- If a charity A purchases or constructs a building but part of that building will be let to charity B for use for charity B’s relevant charitable purposes, charity A can look through and see the charity B’s use in order to zero-rate the entire building. Again, this is subject to conditions.

July 2009 EC proposal to block Lennartz for immoveable property

<http://register.consilium.europa.eu/pdf/en/09/st08/st08618.en09.pdf>

The European Commission has released formal proposals to block the Lennartz mechanism for immoveable property from 1 January 2011. The proposal is that, from that date, businesses would have to apply a capital goods scheme type adjustment from the outset for mixed business / non-business or mixed business / private use. National governments will also be given the option to extend this to moveable property.

July 2009 HMRC policy – VAT status of deposits for sale of land for the construction of zero-rated buildings

<http://www.hmrc.gov.uk/briefs/vat/brief3609.htm>

This is a brief setting out HMRC’s view on how deposits paid in relation to sales of land, and in particular sales by developers to RSLs, should be treated. The main situation in which this applies is sale of land to RSLs to construct dwellings.

July 2009 HMRC policy – meaning of occupation for the option to tax anti-avoidance tests

<http://www.hmrc.gov.uk/briefs/vat/brief3309.htm>

HMRC have announced a change of policy following the judgment of the House of Lords in the case of The Principal and Fellows of Newnham College in the University of Cambridge [2008] UKHL 23.

June 2009 Option to tax - revised automatic permission conditions & concession changes

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_PROD1_029482

April 2009 High Court - Community Housing Association EWHC 455 (Ch)

<http://www.bailii.org/ew/cases/EWHC/Ch/2009/455.html>

This was a successful appeal by CHA against a decision of the VAT Tribunal (July 2008). In July 2006 CHA made a claim for VAT paid in respect of various professional services in relation to housing

construction projects originally carried on by it, but later transferred to a wholly owned subsidiary development company, CHA Ventures Ltd ("Ventures"). HMRC refused the claim.

The VAT tribunal found against CHA, finding that the professional services were supplied to CHA and the supplies were still ultimately made in respect of exempt supplies made by CHA, ie: it looked through the assignment to the ultimate use of the services by CHA.

First the high court found there was a supply from CHA to Ventures. It found that the various contractual arrangements CHA had with building contractors and professionals were novated so as to release CHA from further performance obligations under them, and substitute Ventures as obligee. This was a supply of services from CHA to Ventures and since it was not exempt, it was a taxable supply.

At the high court HMRC first argued that the "relevant" intention of CHA as to use of the services supplied by the professionals did not change in February 2006. The high court rejected this approach. The right to deduct requires a direct and immediate link with taxable transactions and the ultimate aim of the business is irrelevant (the "BLP Principle" after the ECJ case C-4/94 BLP Group Plc v C&E). The transaction with which the professional services had a direct link was the taxable supply by CHA to Ventures, not CHA's ultimate use of the properties.

Alternatively HMRC argued that there was no direct and immediate link between the supply of professional services to CHA and the supply from CHA to Ventures and the professional services therefore could not be regarded as a cost component of the supply by CHA to Ventures. The high court also rejected this approach. For each project, the mechanism of charge by CHA to ventures (amount of fees incurred) ensured that the fee charged was in proportion to the value of the supply received by Ventures. The professional fees were therefore cost components of the supply by CHA to Ventures.

September 2008 VAT adjustments when house builders let dwellings before sale

In the face of the recession many house builders are finding it difficult to sell newly constructed houses and are instead letting them. HMRC have published [VAT Information Sheet 07/08](#) and two briefs, [Revenue & Customs Brief 44/08](#) and [Revenue & Customs Brief 54/08](#) in response to enquiries on the appropriate VAT treatment from the house building sector. The Information Sheet contains some minor concessions for house builders and Revenue & Customs Brief 54/08 contains a helpful policy statement from HMRC.

Chapter 9: International aspects of VAT

December 2010 Place of supply changes – services involving physical performance

<http://www.hmrc.gov.uk/briefs/vat/brief5210.htm>

Services involving physical performance are:

- Services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions)
- Ancillary services relating to such activities, including services of organisers of such activities

From 1 January 2011 there are some changes to the place of supply of such services.

Pre 1 Jan 2011

Up to 1 Jan 2011, the place of supply of all such services (B2B and B2C) is where the services are physically carried out.

From 1 Jan 2011

From 1 Jan 2011 there is a distinction between B2B supplies of:

- Services in respect of admission to events and ancillary services relating to admissions – the place of supply is where the event is
- Other services supplied where performed (eg: technicians, entertainers etc)- the place of supply becomes general rule (ie: where the customer is)

There is no change to the B2C rules for services involving physical performance (where the activities concerned actually take place)

Meaning of admissions

HMRC state: Admission will cover any payment that gives the right to attend an event even if it is covered by a season ticket or subscription. This includes payment to attend conferences, exhibitions and seminars even if they are of an educational nature.

December 2010 Intrastat exemption thresholds unchanged in 2011

<http://www.hmrc.gov.uk/briefs/vat/brief4810.htm>

The Intrastat exemption thresholds will remain the same in 2011:

- The Intrastat exemption threshold for dispatches remains at £250,000
- The Intrastat exemption threshold for arrivals remains at £600,000
- The delivery terms threshold remains at £16,000,000

November 2010 Extended deadline for 2009 EC (8th Directive) VAT claims

<http://register.consilium.europa.eu/pdf/en/10/st14/st14124.en10.pdf>

<http://www.hmrc.gov.uk/news/eu-vat-refunds.htm>

Some EC states have been slow in setting up their 8th Directive refund portals so the normal claims deadline for 2009 has been extended.

The EC has agreed to extend the 6 month deadline for submitting 2009 claims for Vat incurred in other EC states. Normally a 2009 claim would have to be submitted by 30 September 2010. The deadline (for 2009 claims only) is extended by 6 months to 31 March 2011.

The reason is because some states have not yet set up their web portals for making claims. The 2008 “refund directive” (2008/9/EC) required member states to have set up web portals and for all claims to go via these portals from 1 Jan 2010.

March 2010 Temporary HMRC concession on place of supply of freight transport services

<http://www.hmrc.gov.uk/briefs/vat/brief1310.htm>

Until 1 January 2010, the place of supply of B2B freight transport and associated services was the country where the activity physically took place, to the extent that it took place there. That meant that supplies physically performed outside the EU were outside the scope of VAT. Transportation related to imports to and exports from the EU could have a place of supply both within and outside the EU and, to the extent they were performed within the EU, the VAT liability was at zero rate.

From 1 January 2010, B2B supplies of freight transport and associated services became subject to the new B2B general rule - where the business customer belongs - regardless of the place of physical performance. This means that, where the customer is in the UK, the place of supply is the UK even if the supply physically takes place wholly outside the EU. As zero rating only applies to supplies in connection with EU imports and exports, the liability of supplies wholly outside the EU is standard-rated. That means that either the UK-based customer must perform a reverse charge for the supply (if the supplier is outside the UK) or the supplier needs to account for UK VAT on the supply.

HMRC has become aware (via UK businesses and charities) that this change has had a real impact, either in terms of increasing administrative burdens (with no revenue impact for the UK) or, in some cases, resulting in a real VAT cost. HMRC recognise that this change in law has produced an unintended anomaly in the treatment of supplies wholly enjoyed outside the EU, which may also be taxed locally in the place of performance.

From 15 March 2010, where a supply of freight transport (or services closely associated with freight transport) would be treated as supplied in the UK, it will not be treated as supplied in the UK if the use and enjoyment of the services is outside the EU. This administrative easement is being introduced as a temporary measure to allow time for consideration of a more permanent legislative solution.

February 2010 AMEX Europe High Court EWHC 120 (Ch)

<http://www.bailii.org/ew/cases/EWHC/Ch/2010/120.html>

Single v multiple supply and place of supply issues in relation to cross-border management charges

February 2010 Gabbitas Educational Consultants Ltd FTT 268 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00268.html>

Place of supply – meaning of services of consultants

January 2010 Reverse charge – time of supply changes

<http://www.hmrc.gov.uk/vat/time-supply.pdf>

From 1 Jan 2010 the UK is required to adopt harmonised time of supply rules for all supplies subject to a reverse charge under the new general rule for place of supply of services. The UK has opted to also apply them to supplies covered by the UK extension to the reverse charge. The new time of supply rules are:

Single supply of services The time of supply is completion of the service, with an earlier tax point to the extent that they are paid for beforehand. It will be the customer (as tax payer) whose determination of completion will prevail for the purposes of applying the time of supply rules.

HMRC state: In many cases the date of the supplier's final invoice may be appropriate. Equally in others, the invoice might not necessarily represent the most accurate indicator of the date of completion. For example, where a supplier is known to routinely issue final invoices two weeks in advance of completion it would be more accurate to identify completion as the date of the invoice plus two weeks. As a general principle we will accept reliance on an invoice date or any other reasonable methodology provided it does not produce a manifestly inaccurate overall result. Ultimately it is up to individual businesses to identify the most appropriate methodology for their particular circumstances.

Continuous supply of services There will be a tax point at the end of each billing or payment period (or on payment where this is earlier). For this purpose a 'period' will include regular (for example monthly, quarterly, etc) billing/payment programmes and it will also cover situations in which the billing or payment periods are not pre-ordained but, as they arise, cover specific successive periods. So, for example, where a bill is issued for the period 1 January to 10 February, followed by a bill covering 11 February to 5 April, and so on, each will represent a period for the purposes of applying the time of supply rules. In the absence of billing or payment periods there will be a compulsory tax point on 31 December. However, this will only apply where a payment tax point does not arise during the previous 12 months.

December 2009 Changes to Intrastat from 1 Jan 2010

<http://www.hmrc.gov.uk/briefs/brief6909.htm>

<https://www.uktradeinfo.com/index.cfm>

There are changes to the exemption thresholds and also to the scope of goods that must be declared from 1 January 2010.

- The exemption threshold for arrivals will increase from £270,000 to £600,000
- The exemption threshold for dispatches will reduce from £270,000 to £250,000. The reduction is a result of reduced UK sales to the EC – member states are required to collect statistics on a minimum percentage of the total value of their EU trade in goods.

The following will be no longer be excluded from Intrastat reporting:

- Emergency aid for disaster areas
- Sales of new means of transport by VAT registered businesses to private individuals in other Member States

October 2009 8th Directive refund claims

<http://www.hmrc.gov.uk/vat/refund-procedure.pdf>

An 8th Directive refund claim is a claim for foreign VAT from another EC state. The refund procedure will change on 1 January 2010.

At present a business must submit a claim and receipts/invoices directly to the tax authorities of the Member State of Refund ("MSR"). In the first claim, the business must submit a certificate of VAT status from the business's tax authorities.

From 1 January 2010 claims will go initially to the Member State of Establishment (ie for the UK – to HMRC) which will then forward them electronically to the MSR. The amount of refundable VAT will continue to be determined under the VAT rules of the MSR and the relevant repayment will be made directly by MSR to the business. Sending the claim to the tax authorities of the MSE eliminates the need for a VAT certificate of status.

From 1 January 2010, businesses will have an extended period of nine months (rather than the current six month period) in which to submit claims for VAT incurred in the preceding calendar year. Once the MSR receives the claim, it must normally be processed within four months and, if approved,

repaid within ten working days. If further information is requested by the MSR the processing period can be extended up to a maximum of eight months. If these time limits are exceeded then interest will be paid.

All claims from the UK must be made electronically via the Government Gateway. The portal will be open for registration late in 2009 and is currently being tested.

October 2009 Relocation of telecoms, internet and broadcast service providers

<http://www.hmrc.gov.uk/briefs/vat/brief5809.htm>

HMRC have released a brief setting out their views on the relocation of telecoms, internet and broadcasting service providers to low VAT states such as Luxembourg and Madeira.

June 2009 Place of supply changes from January 2010

<http://www.hmrc.gov.uk/vat/place-supply-services.pdf>

HMRC have released draft legislation and guidance to implement the 1 January 2010 changes to the place of supply rules.

March 2009 EC sales lists and time of supply rules for reverse charge sales

<http://www.hmrc.gov.uk/briefs/vat/brief0209.htm>

From 1 Jan 2010 all reverse charge supplies to other EC businesses must be reported on an EC sales list. The time of supply rules for reverse charge supplies will also be altered.

January 2009 Intrastat and delivery terms thresholds

<http://www.hmrc.gov.uk/briefs/brief6108.htm>

From 1 January 2009 the Intrastat threshold is increased from £260,000 to £270,000 and the delivery terms threshold is increased from £14,500,000 to £16,000,000.

November 2008 TRR case – place of supply of reverse charge services

[ECJ case C291/07: Kollektivavtalsstiftelsen TRR Trygghetsrådet](#)

The current UK place of supply rules for reverse charge services are incompatible with EC law. HMRC have announced that they will align UK law with EC law at the same time as the other changes to the place of supply rules come into force on 1 January 2010.

Chapter 10: VAT special schemes

December 2010 RBS Deutschland Holdings ECJ C277/09

<http://www.bailii.org/eu/cases/EUECJ/2010/C27709.html>

Halifax principle – is a scheme set up to exploit differences in VAT law between the UK and Germany abusive? Answer: Not inherently so.

December 2010 Minerva Kulturreisen ECJ C31/10

<http://www.bailii.org/eu/cases/EUECJ/2010/C3110.html>

Does TOMS apply to opera tickets sold alone by a travel agent? Answer: No. To come within TOMS a supply must relate to a journey and must be coupled with a travel services such as transport or accommodation.

December 2010 New s33b - VAT refunds to academy schools

<http://www.hmrc.gov.uk/budget-updates/autumn-tax/clauses-explan-notes.pdf>

The draft clauses for Finance Act 2011 introduce a section 33B into VAT Act 1994 to provide for a VAT refund mechanism for VAT incurred on supplies to academies for non-business purposes. Where goods and services are used for residual purposes, only the part of the VAT attributable to non-business use will be refunded. The aim is to put academy schools on a par with local authority schools.

December 2010 Weald Leasing – ECJ C-103/09

<http://www.bailii.org/eu/cases/EUECJ/2010/C10309.html>

Issue: Is it abusive to set up a controlled company to obtain a VAT cash flow advantage by leasing rather than purchasing assets? Answer: No, provided the leases are on commercial terms. Commercial leases can generate a VAT cash flow advantage for exempt or partially exempt businesses, but that is not abusive. However leases on un-commercial terms between connected parties where the recipient does not have full VAT recovery are abusive if they afford a greater VAT cash flow advantage that would be afforded by a commercial lease. Impact: Asset leasing schemes whose essential aim is to obtain a VAT cash flow advantage must be on commercial terms.

November 2010 extension of UK reverse charge to emission allowances

http://www.legislation.gov.uk/uksi/2010/2240/pdfs/uksiem_20102240_en.pdf?type=em

SI 2010/2239 VAT s55A Specified goods and services and excepted supplies Order 2010

SI 2010/2240 VAT amendment No. 2 Regulations 2010

The two SIs extend the scope of the UK reverse charge to emission allowances and similar credits recognised for the purposes of the EU greenhouse gas emission allowance trading scheme (“EU ETS scheme”). Both SIs take effect from 1 Nov 2010.

November 2010 Changes to listed places of worship and memorials VAT refund schemes

http://www.culture.gov.uk/news/media_releases/7470.aspx

Works on clocks, pews, bells, organs and professional services such as architects’ fees, will be excluded from 4 Jan 2011 to 31 March 2011. It is not currently clear if either scheme will be extended beyond March 2011, when both schemes are due to finish.

November 2010 Changes to the capital goods scheme

<http://www.hmrc.gov.uk/briefs/vat/brief47010.htm>

This is HMRC's consultation on legislation for the incorporation of non-business use of capital items into the capital goods scheme as required by the EC Technical Directive. The consultation runs to 30 November, with the legislation taking effect from 1 Jan 2011.

HMRC are also taking the opportunity to:

- Allow PE special methods to include non-business activity. VAT attributable to non-business activity is treated as exempt input VAT for the purposes of the PESH. However if a combined method is used the de-minimis tests do not apply (see Chapter 4 update).
- Change some of the capital item definitions. The requirement for an extension to increase floor area by 10% or more will be removed as will the requirement for goods to be affixed to the building in a renovation
- Legislate to ensure that insignificant CGS adjustments are disregarded, whether they favour HMRC or the taxpayer. There will be a mandatory requirement that taxpayers using the CGS ignore insignificant adjustments where:

Total VAT bearing expenditure is:	and	The adjustment percentage is:
£1m or less		10% or less
£10m or less		5% or less
More than £10m		1% or less
- Enact a concession (para 9.4 Notice 742A) that allows VAT recovery under a CGS type calculation by a person who was not registered for VAT at the time they acquired a CGS asset. The concession will be withdrawn on the date the legislation comes into force
- Clarify in the draft legislation that the representative member of a VAT group is the owner for VAT purposes of all CGS items owned by companies while they are within the group. The legislation also clarifies who the owner is where there is a TOGC and other cases where there is a transfer without a VAT supply. There is no change to HMRC's policy in these areas and the new legislation aims only to put the matters beyond doubt.

Main changes

Definition of capital item: items will be defined by reference to the value of VAT-bearing capital expenditure (rather than input tax-bearing capital expenditure). The scope of the CGS will be widened to include ships and aircraft that cost £50k or more.

Clawback / payback rules: the rules will be widened to cater for changes in the business / non-business use of assets. The rules will apply where business related costs are provisionally claimed or not claimed on the basis of an intended supply, but before that intention comes to fruition, there is either a change of intention or the costs are actually used to make a different type of supply.

Lennartz changes: capital costs incurred after 1 Jan and attributable to non-business use will be excluded from Lennartz. This ensures that in transitional cases (an asset straddling 1 January), where the business has chosen to claim Lennartz accounting for the pre-Jan costs, then the Lennartz VAT on private use charge is computed by reference to just those costs. This prevents double taxation.

October 2010 Moorbury UTT 360

<http://www.bailii.org/uk/cases/UKUT/FT/2010/360.html>

Can VAT reclaims due under a Halifax redefinition be capped as out of time? Answer: No. Halifax redefinition overrides the time limits for claims.

August 2010 Atrium Club High Court EWHC 970 (Ch)

<http://www.bailii.org/ew/cases/EWHC/Ch/2010/970.html>

The Halifax principle. Can a scheme be redefined even though it never worked in the first place and even though it relies on steps that were not originally envisaged? Answer: yes, if a tax advantage was the essential purpose and a tax advantage (albeit a different tax advantage) has actually arisen.

July 2010 TOMS and hotel bill-back arrangements

<http://www.hmrc.gov.uk/briefs/vat/brief2110.htm>

Following changes to TOMS from 1 January 2010, HMRC has reached an agreement with representative bodies of the business travel sector about invoicing for supplies under the arrangement known as “hotel bill-back”.

May 2010 University of Essex UKFTT 162 (TC)

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00467.html>

CGS impact of a developer zero-rating a long lease then the developer joining the tenant’s Vat group

November 2008 flat rate scheme conditions

In the 2008 pre-budget report the government announced two alterations to the flat rate scheme with effect from 1 April 2009:

- The entry requirement that a business have total expected business income in the next year under £187,500 is to be removed. However the other scheme conditions (p225 of A Practical Guide to VAT) remain unchanged.
- The test for leaving the scheme is clarified. You must leave the scheme if your “income” exceeds £225,000. The calculation of income must be performed annually and on the same basis as the calculation of VAT liability. So if VAT liability is calculated on the basis of cash received, the leaving test will also be based on cash received; if liability is calculated on the basis of invoices issued, the leaving test will be based on the same method.

December 2009 Changes to TOMS from 1 Jan 2010

<http://www.hmrc.gov.uk/briefs/vat/brief7409.htm>

As previously announced by HMRC (April 2009) two changes will be made to TOMS from 1 Jan 2010:

- **Opt out:** the UK allows B2B supplies for the customer business’s own consumption to be dealt with outside TOMS
- **Opt-in:** the UK allows B2B supplies for onward supply by the customer to be dealt with within TOMS

Both these are incompatible with the VAT Directive as TOMS applies if and only if the customer is the final consumer of the supply. The HMRC brief explains the transitional arrangements for the changes.

Opt out: tour operators may recover VAT on supplies of goods or services received before 1 January 2010 for supplies being made for the direct benefit of the traveller after that date. The value of the supplies on which input tax is recovered cannot be included in the calculation of the margin for supplies being accounted for under the TOMS.

Equally, tour operators using the opt-out should account for VAT under the normal rules where they issue a VAT invoice or receive a payment before 1 January 2010 for supplies of travel services being made by them to another taxable person. This means that the selling price which feeds into box 2 of the provisional calculation and box 1 of the annual calculation should reflect only the balance of the price payable on or after January 2010.

Opt in: where tour operators have not previously recovered VAT on goods and services supplied to them for the direct benefit of the traveller, they may recover that VAT from 1 January 2010 for supplies being made after this date. Equally, from 1 January 2010 they should account for output tax on supplies made after this date on the full value of the supply (including payments received prior to 1 January 2010) in accordance with the normal time of supply rules. A VAT invoice must also be issued to customers. However, the customers, being themselves tour operators, will only be able to recover VAT if they are in turn supplying the travel services to another business for resale. If tour operators use the date of receipt of payments exceeding 20 per cent of the selling price as their tax point (and have accounted for output tax at that time), they should also issue a belated VAT invoice in respect of those payments.

April 2009 Changes to TOMS

<http://www.hmrc.gov.uk/briefs/vat/brief2709.htm>

HMRC have announced several changes to TOMS as a result of the EC concerns over the compatibility of the UK TOMS legislation with the EC VAT Directive. The changes will take effect from 1 January 2010. The changes are:

- Supplies to business customers for resale (the 'opt in')
- Supplies to businesses for their own consumption and the provision of school trips ('the opt out')

November 2008 published retail scheme limits

In the 2008 pre-budget report the government announced that the turnover threshold above which a business may not use one of the five published retail schemes will be increased from £100m to £130m from 1 April 2009. Businesses with turnover above this threshold must agree a bespoke retail scheme with HMRC.

July 2008 Cash accounting scheme – recognition point

HMRC has updated VAT Notice 731 cash accounting to include new and updated statutory (tertiary law) guidance on the tax point of payments by cheque, credit /debit card and factored debts.

Chapter 11: Other topics

December 2010 CGI Europe Ltd – First Tier Tribunal FTT 396

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00678.html>

Joint contracts of employment in outsourcing situations. For the salary element of the fee to be for a supply of staff (and thus outside the scope of VAT for joint employees) the staff must come under the control of each joint employer when working on their business – otherwise it is not a supply of staff but a supply of services.

December 2010 Everything Everywhere Ltd (formerly T-Mobile) – ECJ C 276 / 09 - payment handling charges

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&jurcdj=jurcdj&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typord=ALLTYP&numaff=&ddatefs=26&mdatefs=11&ydatefs=2010&ddatefe=3&mdatefe=12&ydatefe=201&nomusuel=&domaine=&mots=&resmax=100&Submit=Rechercher>

Payment handling charges made by a mobile phone company. Payment handling charges made by the supplier of a service (in similar situations) are ancillary to the service. The situation is different to where a third party provides payment handling services to the supplier

November 2010 Updated nursing agency concession

<http://www.hmrc.gov.uk/briefs/vat/brief4010.htm>

The concession exempts supplies of nurses and similar by nursing agencies. The concession requires the nursing agency to be registered. From 1 Oct 2010, under the Health and Social Care Act 2008, nursing agencies will no longer have to be registered. The update amends the concession to require that the agency would have been required registered before 1 Oct 2010.

August 2010 EC infringement proceedings over UK VAT grouping rules

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/795&format=HTML&aged=0&language=EN&guiLanguage=en>

The EC has decided to refer The Netherlands, Ireland, Finland, Sweden, UK, the Czech Republic and Denmark to the ECJ with regard to their failure to respect their obligations under EU law as regards VAT grouping rules. The EC considers the legislation in seven Member States is incompatible with the EU rules on VAT grouping:

- For The Netherlands, Ireland, Finland, UK, Czech Republic and Denmark, the problem is that they allow non-taxable persons to join a VAT group.
- Proceedings against Sweden and Finland are due to the fact that these Member States limit the VAT grouping system to financial and insurance services.
- For the Netherlands, the proceedings also cover the failure to notify changes to the application of their VAT grouping scheme to the VAT Committee.

April 2009 HMRC guidance on the withdrawal of the staff hire concession

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_PROD1_029323

HMRC have released VAT Information Sheet 03/09 confirming withdrawal of the staff hire concession from 1 April 2009 and providing guidance to those affected by the change. Parts B and C of the staff hire concession remain in place (seconding staff for no profit and placement of disabled workers under the sheltered placement or similar schemes)

December 2008 Riverside Sports & Leisure Ltd – VAT Tribunal V20848

<http://www.bailii.org/uk/cases/UKVAT/2008/V20848.html>

VAT treatment and valuation of barter transactions

December 2008 HMRC consultation on legislative implementation of ESCs

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PR_OD1_028967

The House of Lords' decision in Regina v HM Commissioners of Inland Revenue ex p Wilkinson [2005] UKHL 30 made clear that the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously thought. In light of that decision, HMRC is reviewing its published concessions and the indications are that most ESCs will be able to continue in their current form as they are within the scope of HMRC's administrative discretion. Where an existing concession exceeds the scope of the discretion the concession will be maintained by putting it on to a legislative basis where it is appropriate to do so.

Chapter 12: Operational aspects

December 2010 Changes to the VAT payment on account thresholds

<http://www.hmrc.gov.uk/briefs/vat/brief5210.htm>

The January 2011 VAT rate increase means that there will be consequential changes to the VAT Payment on Account (POA) thresholds. Under the POA, certain businesses are required to make monthly VAT payments. Since the VAT rate change will increase the VAT liabilities of businesses, the POA entry and exit thresholds will go up from £1.6m and £2m to £1.8m and £2.3m.

The thresholds will change on 1 June 2011 for quarterly reviews and on 1 December 2011 for annual reviews

December 2010 Athenaeum Club – FTT 583

<http://www.bailii.org/uk/cases/UKFTT/TC/2010/TC00833.html>

Careless error penalty – claiming VAT where none was due (zero-rated supply but no invoice available). Taxpayer contacted HMRC but received no advice. Taxpayer was confused by other similar invoices. Found for the taxpayer – reasonable care was taken.

August 2010 HMRC guidance on 20% VAT rate rise

<http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-rise-guidance.pdf>

<http://www.hmrc.gov.uk/vat/forms-rates/rates/anti-forestall-guidance.pdf>

HMRC have released guidance on the rise in the standard rate of VAT on 4 January 2011 and the associated anti-forestalling legislation. The guidance is very similar to that issued for the 15% - 17.5% rate rise.

September 2010: Paying VAT

<http://www.hmrc.gov.uk/payinghmrc/vat.htm#7>

This is new HMRC guidance on how to pay VAT.

September 2010 HMRC guidance – correcting errors on earlier VAT returns

<http://www.hmrc.gov.uk/vat/managing/problems/corrections/correct-mistakes.htm>

July 2010 Penalties for failure to notify a liability to tax from 1 April 2010

<http://www.hmrc.gov.uk/briefs/customs-duty/brief3010.htm>

HMRC have released guidance on the penalties that apply for a failure to notify HMRC occurring on or after 1 April 2010. The new regime was introduced by sch 41 FA 2008.

April 2010 Paying VAT to HMRC by cheque

<http://www.hmrc.gov.uk/briefs/vat/brief1410.htm>

From 1 April 2010 all cheque payments sent by post will be treated as being received by HMRC on the date when cleared funds reach the HMRC bank account – not the date when HMRC receive the cheque.

A cheque takes three bank working days to clear – excluding Saturdays, Sundays, and bank holidays. HMRC advise that to allow for possible postal delays businesses should allow at least three working

days for a cheque payment to reach HMRC and a further three working days for the payment to clear HMRC's bank account.

This change does not affect any cheque payments made by Bank Giro. Payments by Bank Giro are treated as electronic which means that businesses will get up to an extra seven calendar days for the cleared payment to reach HMRC (unless they use the Annual Accounting Scheme or are required to make Payments on Account)

December 2009 SI 2009/2978: Electronic VAT returns and payments

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092978_en.pdf

These regulations enact the requirement to submit electronic VAT returns and pay VAT electronically for accounting periods that start on or after 1 April 2010. They amend SI 1995/2518 The VAT Regulations 1995.

Affected businesses The following businesses will need to submit electronic VAT returns from the above date:

- Businesses with a VAT exclusive annual turnover exceeding £100,000 at any point on or after 31 December 2009. If the turnover subsequently falls below this level it does not matter – once in the electronic return system you must stay there
- Businesses that first become VAT registered on or after 1 April 2010 – irrespective of turnover

However there are two exceptions:

- A person who the Commissioners are satisfied is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications
- Certain businesses undergoing insolvency proceedings

HMRC will send all existing businesses that must submit electronic returns formal notification in February 2010.

December 2009 SI 2009/2972: Zero-rating of nurses' prescriptions

This order allows zero rating for nurses' prescriptions by pharmacists and GP dispensing

September 2009 HMRC guidance on reversion of VAT standard rate to 17.5%

<http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-rise-guidance.pdf>

<http://www.hmrc.gov.uk/vat/forms-rates/rates/anti-forestall-guidance.pdf>

HMRC have released detailed guidance for businesses on the rate increase on 1 January 2010 and also on the anti-forestalling legislation.

September 2009 Wrongdoing penalty

<http://www.hmrc.gov.uk/briefs/vat/brief5209.htm>

FA 2008 introduced a new penalty ("wrongdoing penalty") that applies from 1 April 2010 where any person makes an unauthorised issue of an invoice showing or including VAT. For example an unregistered business issues a VAT invoice

September 2009 HMRC guidance on reversion of VAT standard rate to 17.5%

<http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-rise-guidance.pdf>

<http://www.hmrc.gov.uk/vat/forms-rates/rates/anti-forestall-guidance.pdf>

HMRC have released detailed guidance for businesses on the rate increase on 1 January 2010 and also on the anti-forestalling legislation.

April 2009 New 9 digit VAT numbers and new modulus check

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageExcise_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_029370

The current series of 8 digit VAT numbers will run out soon. HMRC have decided to adopt a new series of VAT registration numbers which follows the same format as those currently used. However, the 'check digits' ie the final two digits of the VAT number will be determined by a new modulus check.

HMRC have been in contact with a number of external stakeholders, including software developers many of whom have an inbuilt modulus check in their packages. A staged release of the new numbers – starting with 100 XXXX XX – is scheduled to commence in May 2009, and with full implementation expected early in 2010.

HMRC is not intending to make the new modulus check public and indeed the current check had never been made public by HMRC. However following representations HMRC will consider making the new modulus check publicly available.

April 2009 New penalty regime for incorrect tax returns

<http://www.hmrc.gov.uk/about/new-penalties/>

A new penalty regime is being introduced between April 2009 and April 2010. This will have major implications for all taxpayers, including charities. The new penalties regime applies to:

- Inaccuracies in returns or other documents that understate tax due to HMRC, and
- Failure to notify HMRC of an underassessment to tax

The regime will initially apply to Income Tax, Corporation Tax, Capital Gains Tax, VAT, Construction Industry Scheme, PAYE and National Insurance contributions, but will be extended to other taxes in one year's time.

In general the regime applies where:

- The inaccuracy is contained in (or the underassessment relates to) a return or other document which is due to be filed on or after 1 April 2009, and
- The return or other document (or underassessment) relates to a tax period beginning on or after 1 April 2008

Behaviour The rate of penalty depends on the taxpayer's behaviour.

April 2009 New time limits for claims and assessments

<http://www.hmrc.gov.uk/about/new-compliance-checks.htm>

Finance Act 2008 chapter 2 and schedule 39 align the time limits for claims and assessments across the main taxes. This change will take effect between 1 April 2009 and 1 April 2010. The time limit for tax payer claims across all taxes will be aligned at 4 years. The time limit for VAT claims under the museums and galleries scheme is also increased to 4 years.

A statutory instrument is to be released setting out the details of the transitional arrangements between 1 April 2009 and 1 April 2010.

April 2009 New HMRC compliance and information powers

<http://www.hmrc.gov.uk/about/new-compliance-checks.htm>

From 1 April 2009, HMRC will have one set of powers covering PAYE, VAT, Income Tax, Capital Gains Tax, Corporation Tax and Construction Industry Scheme to:

- Visit businesses to inspect premises, assets and records

- Ask taxpayers and third parties for more Information and documents

The new legislation will also provide: • greater flexibility in setting record-keeping requirements after 1 April 2009 • new time limits for assessment and claims which will not be fully in force until April 2010 - but there will be some transitional arrangements from 1 April 2009 • important safeguards for customers

April 2009 HMRC policy on unjust enrichment following House of Lords M&S decision

<http://www.hmrc.gov.uk/briefs/vat/brief0509.htm>

HMRC have announced their policy on unjust enrichment claims following the House of Lords decision in Marks & Spencer. HMRC now accept that unjust enrichment does not apply to claims made before 26 May 2005. Any claims refused before that date can now be resubmitted.

January 2009 Updated HMRC guidance on theatre ticket sales spanning the change in rate of VAT

<http://www.hmrc.gov.uk/vat/vat-rate-change.pdf>

HMRC have updated the guidance in respect of theatre tickets sold before a VAT rate change but for a performance on or after the rate change.

December 2008 Transfer of tribunal functions and Revenue and Customs appeals order 2009

<http://www.hmrc.gov.uk/si/trib-ref-em.pdf>

The Order makes legislative changes to transfer the functions of the four existing tax tribunals to the tribunals established under the Tribunals, Courts and Enforcement Act 2007 (TCEA), abolish existing tax tribunals other than the General Commissioners and consequentially amend tax and other enactments. It also makes changes to legislation governing the administration by HMRC of appeals against tax decisions. The changes streamline HMRC's administration of tax appeals and introduce an optional statutory review of appealable decisions.

December 2008 Business Payment Support Service

<http://www.hmrc.gov.uk/pbr2008/business-payment.htm>

From 24 November 2008 HMRC have introduced a new, dedicated Business Support Service designed to meet the needs of businesses affected by the current economic conditions. This will provide specific help where customers are worried about being able to pay tax, National Insurance, VAT or other payments owed to HM Revenue & Customs.

August 2008 HMRC default interest policy

HMRC announced in Revenue & Customs Brief 38/08 that their policy of not charging default interest on voluntary disclosures below the notification threshold ceased from 1 August 2008. Previously HMRC did not charge interest on the basis that, had the error been adjusted on a VAT return, no interest would have been payable.

Chapter 14: Further information

November 2010 New address for VAT error corrections

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_ShowContent&propertyType=document&id=HMCE_PROD1_027942

All letters or forms telling HM Revenue & Customs about mistakes on VAT Returns should be sent to:

VAT Error Correction Team

HM Revenue & Customs

Queen's Dock

22 Kings Parade

Liverpool

L74 4AA

Tel: 0845 601 0904

For general enquiries about VAT error correction procedures, contact the VAT Helplines

December 2008 option to tax unit move

From 4 February 2009 the HMRC option to tax unit will be at:

Option to Tax National Unit, Cotton House, 7 Cochrane Street, Glasgow G1 1GY

Tel: 0141 285 4174/4175 Fax: 0141 285 4454

The unit's preferred method of communication is by email for which there is a web mailer at

http://www.hmrc.gov.uk/asplib/mailler/mailler_form.asp?dpt=OPTION_TO_TAX

November 2008 HMRC business support service

HMRC have introduced a new service for businesses that anticipate problems making VAT payments to HMRC. Businesses are advised to contact the service before a payment is due rather than wait until the deadline has passed. HMRC state that they will not charge penalties on payments included in an arrangement, although interest will be payable.

The HMRC Business Payment Support Line number is 0845 302 1435

November 2008 email queries to HMRC Charities

There is now a web mailer on the HMRC website which allows you to send emails directly to HMRC Charities. The web mailer is at:

http://www.hmrc.gov.uk/asplib/mailler/mailler_form.asp?dpt=CHARITIES