

## Welcome to our April Newsletter



Our aim is to keep you up to date with ideas and information that will help you gain the best possible advantages from working with us. These newsletters will be sent regularly to help achieve this aim, and we hope you enjoy reading them.

### Sign up for new digital VAT system slower than expected



The latest data from HM Revenue & Customs (HMRC) has revealed that only 30,000 companies have registered for Making Tax Digital (MTD). This figure represents just 2.5 per cent of the 1.2 million companies that will need to sign up to the Government's new digital system which came into effect on 1 April 2019.

In its official release, HMRC said that 2,000 companies are now signing up every day, but with just a matter of days to go there are fears that many aren't prepared, which could lead to a chaotic transition period.

Mel Stride, Financial Secretary to the Treasury, said: "It has never been more important for businesses to be able to seize the opportunities that digital technology offers."

He highlighted that the switch over to MTD would allow business "to spend time focusing on innovation, growth and the creation of jobs."

However, it would appear that many businesses see the new requirements as a burden on their business and are therefore delaying the point at which they register.

MTD is compulsory for all VAT-registered companies above the £85,000 threshold and requires them to start keeping their records digitally and sending information to HMRC using compatible software.

Although the Government has said it will offer a soft-landing period in the first year for small companies struggling with the new rules, it is vitally important that businesses are prepared.

Businesses signing up now must be aware that they will be placed in the MTD programme that will require them to start recording and submitting their VAT returns digitally immediately, even if they are not yet required to do so.

**If you are unsure of your requirements under MTD or would like help with your preparations for the new regime, contact our team immediately. We can help to find a software package that suits you and your business.**

## Is a brownie a cake or confectionery?



However, two recent cases at the First Tier Tribunal (FTT) have re-opened the debate about which foodstuffs should or shouldn't be zero-rated for VAT.

Most recently, HM Revenue & Customs (HMRC) lost a case on the status of a 'raw chocolate brownie' containing no egg, dairy or gluten.

In the case of Pulsin' Ltd and the Commissioners for Her Majesty's Revenue and Customs, [2018] UKFTT 0775, TC06909 HMRC argued that the brownie, produced by Pulsin', was a chocolate bar and not a cake.

The case began when Pulsin' tried to change the classification to benefit from the zero-rated VAT rate for cakes.

It admitted that it had originally selected the category 'cocoa and chocolate confectionery' when filing for VAT, due in part to a lack of understanding of the implications of doing so.

However, having sought advice it believed that its product should not be regarded as confectionery and was instead a cake.

During the FTT, the judges looked at the Pulsin' brownie and compared it to other confectioneries and chocolate bars to see whether it should be zero-rated.

The courts have been asked to determine whether a wide range of food products should be VAT zero-rated.

Most famously in the case of Jaffa Cakes, the judge had to decide whether they are a cake or a biscuit (it turns out they are a cake as the name suggests and therefore zero-rated).

Their deliberations took into consideration the circumstances in which it was purchased and customer reviews on Amazon and Ocado websites. The Tribunal also examined the brownie alongside other cakes produced by Morrisons bakery, Mr Kipling and Pret.

In its findings, the Tribunal stated that "the flavour and sweetness profile experienced by the Tribunal on eating was consistent with the overall sugar content of the various products. The texture was dense and similar to the majority of the other brownies tasted". In its submission, HMRC also believed that the brownie could be considered as a form of sports nutrition as the product was promoted in stores like Holland & Barratt and other health food chains.

The FTT judge did recognise that the ingredients used were not consistent with other cakes, but said that its classification was "a matter of informed impression". The judge concluded: "Put alongside a slice of traditional Victoria sponge, a French Fancie and a vanilla slice or chocolate éclair the products may look out of place.

However, put alongside a plate of brownies, or, for instance, at a cricket or sporting tea where it is more likely that bought and individually wrapped cakes will be served on a plate the products would absolutely not stand out as unusual."

It is understood that as a result of its finding Pulsin' was able to reclaim around £300,00 in tax and will now enjoy zero-rated VAT status.

In a similar case, the owners of a juice bar The Core have won zero-rated VAT status after the FTI declared that fruit and vegetable juices sold as a meal replacement were food and not beverages.

The Core (Swindon) Ltd v HMRC [2018] TC 06874 saw the juice bar, which sells mixed fruit and vegetable juice as part of a "juice cleanse programme", appeal for zero-rated status on the basis that its supply was made as part of a food replacement scheme.

Customers using the programme would participate over multiple days, where meals were replaced by juices and smoothies – a point that was also made clear in the company's marketing.

During the Tribunal, the owners of The Core accepted that individual sales of the juices were VAT-able beverages, but believed that its programme was different due to its intention.

HMRC disagreed with its claim and the company appealed.

However, the FTI judge ruled that the juices were food on the basis that they were perceived as meal replacements by customers.

Both of these cases highlight the importance of seeking professional VAT advice when developing and marketing a product, as certain characteristics could lend the service or product to being zero-rated.

**If you would like advice on the VAT classification of your service or product, speak to the team at UK VAT Advice.**