

Welcome

October 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.

Duty-free may return in the event of a no-deal Brexit



The Chancellor of the Exchequer, Sajid Javid, has announced that duty-free shopping with EU countries is likely to return in the event of the UK leaving the EU without a deal.

Under the arrangements, those travelling to the EU will be able to take advantage of duty-free shopping, which will ensure that no UK excise duties will be due on cigarettes and alcohol.

The decision will affect shopping in UK ports, airports and international train stations and could mean that a bottle of wine purchased in Heathrow duty-free on the way to the EU could be up to £2.23 cheaper, according to the Government.

Those returning to the UK from the EU will still be permitted to bring back unlimited amounts of these goods for personal use, but they may have to pay duty in Europe.

In some cases, UK citizens will have the alternative option to buy limited amounts of duty-free alcohol and cigarettes at duty-free shops in Europe instead.

The travel industry has been keen for the Government to re-introduce duty-free arrangements, which stopped when the EU Single Market was introduced, but it is only the prospect of a no-deal Brexit and a complete split from the EU that will make this possible.

Chancellor of the Exchequer Sajid Javid said: "As we prepare to leave the EU, I'm pleased to be able to back British travellers.

"We want people to enjoy their hard-earned holidays and this decision will help holidaymakers' cash go that little bit further.

"Duty-free shopping is already permitted for travellers going to non-EU countries. A consultation will also be launched shortly on our long-term duty-free policy."

If you are concerned about how this change may affect you or your business, please **contact our experienced team at UK VAT Advice.**

The National Car Parks VAT case



Not quite on the scale of public interest as the Jaffa Cake case, National Car Parks has nonetheless raised public awareness of the intricacies of VAT law and in particular the definition of 'consideration'.

First appearing in 2014 when NCP sought to recover from HMRC just shy of half a million pounds of VAT declared between 2009 and 2012 on overpayments, the Court of Appeal has found for HMRC.

The Case concerned car park machines which did not give change and relied on the example of a motorist parking their car for a period of one hour for a published rate of £1.40 but only having a £1 coin and 50 pence piece and using these to pay the £1.40 charge.

NCP argued that the additional 10p was freely given and was therefore outside the scope of VAT whilst HMRC's view was that the total amount paid was consideration for the supply of the right to park the vehicle.

In each of the First and Upper Tier Tribunals and the Court of Appeal, the judgement went against NCP on the grounds that the motorist entered into a contract for the supply of the right to park their vehicle for a sum not less than the published rate for the time period specified. The actual consideration for the supply was the amount inserted into the machine by the customer and the contract became effective no later than when the customer pressed the green button to accept the issue of a parking ticket reflecting the sum paid.

One of the reasons this Case has gone through three Courts is the clear contrast with the case of the Borough Council of King's Lynn and West Norfolk in which very similar circumstances produced a different result, namely that the amounts overpaid were not VATable consideration for the supply by the Borough Council.

The suggestion is that the Borough Council case was subtly different because the scale of parking charges was laid down in a bye-law such that the contractual terms between the Council and the motorist specified the amount payable whereas in the NCP case the tariff board could be seen to reflect a minimum charge rather than a fixed charge.

Despite being cautious in their language, one could also read the Court of Appeal decision as implying that the First Tier Tribunal may have got it wrong in the Borough Council case.

The oft quoted case of Tolsma which has been seen as something of a precedent in consideration cases was again referred to in NCP but the Judges saw a clear distinction.

Tolsma concerned a busker and the question whether amounts paid by passers-by were consideration for a supply of the services of providing musical entertainment or were freely given donations.

The important factors in the Tolsma case were that there was no agreement with nor obligation on passers-by to pay to listen and whilst some would pay, other would not and some would pay without even stopping to listen to the musical performance.

This seems to me to be a very different set of circumstances from the NCP case and I am surprised that so much store was set by the Tolsma decision in arguing for NCP, particularly as Tolsma was about whether there had been any supply for consideration whilst NCP is about the value of the supply for consideration.

The most often seen example of payment for a supply being split between consideration and a freely given donation is in the context of fundraising events by charities and HMRC are open in their acknowledgement that an amount given over and above a ticket price can be treated as freely given (VAT Notice 701/1 paragraph 5.12 refers), subject to meeting the conditions laid down in Paragraph 4.9 of their Guidance Note 'Charity fundraising events: exemptions'.

Thankfully there is no suggestion of which I am aware that the NCP decision negatively impacts this treatment of voluntary top-up donations made to charities.