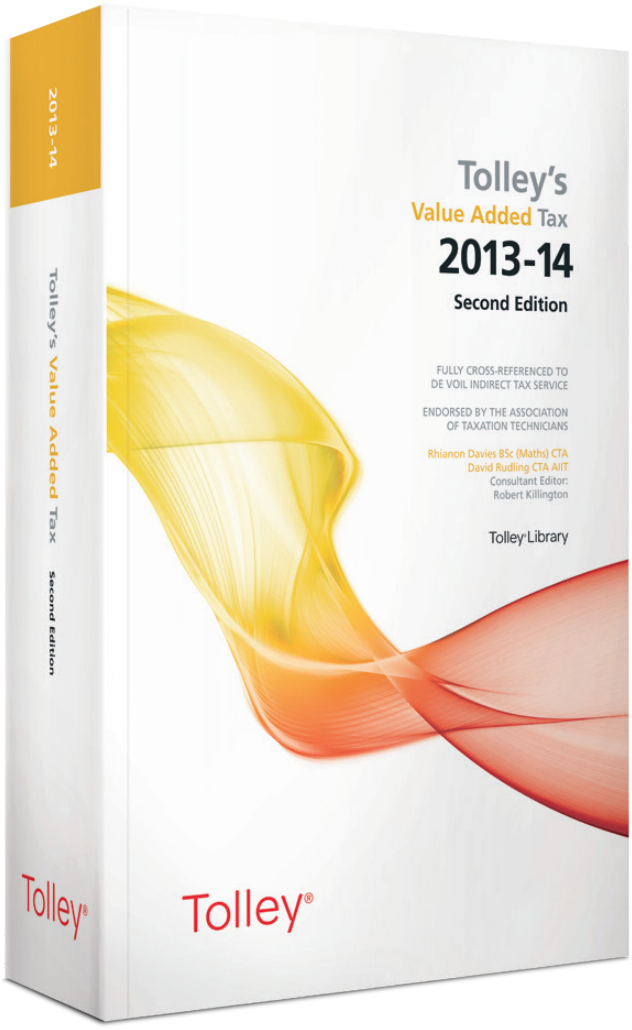
TOLLEY'S VALUE ADDED TAX 2013-14

Key changes in VAT



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A selection of information has been taken from Tolley's Value Added Tax 2013 to provide you with overviews of major changes in VAT.

1. **Taken from 'Groups of companies' chapter**

Eligibility for group treatment

[27.2]

Two or more 'bodies corporate' (see (1) below) are eligible to be treated as members of a group if

- each of the bodies is 'established' (see (3) below) or has a 'fixed establishment' (see (4) below) in the UK;
- they satisfy the control test, i.e.
  - (a) one of them 'controls' (see (2) below) each of the others,
  - (b) one person (whether a body corporate or an individual) controls all of them, or
  - (c) two or more individuals carrying on a business in partnership control all of them; and
- where applicable, they satisfy the anti-avoidance provisions below.

But a body corporate cannot be treated as a member of more than one group at a time and a body which is a member of one group is not eligible by virtue of the above provisions to be treated as a member of another group.

[*VATA 1994, ss 43A(1), 43D(1)(2); FA 1999, Sch 2 para 2; FA 2004, s 20(2)*].

HMRC have no discretion to accept group registration where these requirements are not met (*E Du Vergier & Co Ltd* (VTD 4) (TVC 32.1)).

In *European Commission v UK, ECJ Case C–86/11, 25 April 2013 unreported* (TVC 20.9A), the ECJ dismissed the application by the European Commission for a declaration that, by permitting non-taxable persons to be members of a group of persons regarded as a single taxable person for purposes of VAT, the UK had failed to fulfil its obligations under *Directive 2006/112/EC, Art 9* and *Art 11*. The ECJ decided that the Commission had not established that the objectives of *Art 11* militated in favour of an interpretation according to which non-taxable persons could not be included in a tax group.

2. **Taken from 'Education' chapter**

Research

From 1 August 2013

[16.6]

The UK has received notification from the European Commission that its exemption for business supplies of research between eligible bodies does not comply with European legislation. The UK has accepted that this is the case and plans to withdraw the exemption from 1 August 2013.

(HMRC Brief 38/12).

HMRC have provided the following guidance on the distinction between

- supplies of research that are outside the scope of VAT; and
- those that are exempt business supplies which will be affected by the withdrawal.

Collaborative research

Collaborative research is where several bodies (typically universities or other eligible bodies) get together to apply for grant funding to undertake a research project. It is not uncommon for one of the applicants to be shown as the head or lead body which deals primarily with the funding body including receiving funding which is passed to other applicant bodies for their contribution to the project. For ease, contracts are often concluded only in the name of the funding body and the lead research body even though this is a collaborative project. HMRC accept that in such cases of collaborative research, all research services provided by each of the bodies involved in the project are outside the scope of VAT, even if the funding may be passed on by the lead research body to others, and only the lead research body is party to the contract with the funding body.

Further guidance

For there to be a supply of services for VAT purposes, there must be a direct and immediate link between consideration paid and a service provided. HMRC do not consider this to happen in the case of research which is funded, either by the public sector or by the charitable sector, for the wider public benefit.

Where a subsidy is granted by the donor to the recipient to enable a third party to obtain a specific service (or to obtain it more cheaply) this would, as a general rule, be a taxable transaction.

The main question to answer is whether the funding is the consideration or part of the consideration for any specific supply. If not, then it is outside the scope of VAT.

Situations where the funding will be outside the scope of VAT include the following.

- Research which is funded for the 'general public good' and there is no direct benefit for the funding body.
- Research which is funded for the general public good and is either not expected to generate any intellectual property (IP), or if it does then any reports or findings will be freely available to others.
- Where there is a collaborative agreement between different research institutions where all parties to the grant are named on the application.
- Where the funding flows through one named party—and they act purely as a conduit passing on the funds to others involved in the research project—the funding remains outside the scope of VAT.

Where funding is provided to a named party for research that will either generate IP to be exploited by the funder and/or is not for the public good and they subsequently decide to sub-contract some of the research to an eligible body (for example a university), the initial funding to the named party (assuming an eligible body) will be taxable consideration for a supply.

(HMRC Brief 10/13).

3: Taken from 'European Union: Single market'chapter

Acquisitions of motorised land vehicles (NOVA)

[19.39]

From 15 April 2013, any person (other than an excepted relevant person) bringing a motorised land vehicle into the UK, for permanent use on the road must notify (or arrange for an authorised third party to notify) HMRC of the arrival of the vehicle within 14 days, prior to the vehicle being registered with the DVLA. If a non-registered business or private individual brings a car into the UK from an EU supplier, payment of the VAT due is required at the same time as the notification is made. Any vehicle that has not had the appropriate VAT charges paid will not be able to be registered with the DVLA. For VAT-registered businesses, the VAT charge due on the vehicle is to be accounted for on the VAT return, as with other goods acquired from the EU. The notification may be made either in paper form or electronically. It must contain

- the name and current address of the person bringing the land vehicle into the UK;
- the date when the land vehicle arrived in the UK;
- in a case where an excepted relevant person decides to register the vehicle in the UK, the date of the decision;
- a full description of the land vehicle which shall include any vehicle registration mark allocated to it by any competent authority in another member state prior to its arrival and chassis identification number;
- where applicable, the registration number of the person bringing the land vehicle into the UK;
- the date of the notification;
- in the case of an acquisition arising from a deemed supply under *VATA 1994, Sch 4 para 6*
    - the value of the transaction determined in accordance with *VATA 1994, Sch 7 para 3*;
    - details of any relief claimed or to be claimed in relation to the acquisition under *VATA 1994, Sch 8 Group 12 Item 2(f)* (zero rating: drugs, medicines, aids for the handicapped etc.);
- in the case of any other acquisition
    - the consideration for the transaction in pursuance of which the land vehicle was acquired;
    - the name and address of the supplier in the Member State from which the land vehicle was acquired;
    - details of any relief claimed or to be claimed in relation to the acquisition under *VATA 1994 Sch 8, Group 12 Item 2(f)*; and
- any other particulars specified in a notice published by HMRC.

The notification must be made in English, and must include a declaration that the information provided is true and complete.

[*VATA 1994, Sch 11 para 2(5D); SI 1995, Reg 148A*].

4. Taken from 'Input Tax' chapter

Who can claim input tax

[34.5]

Subject to below, for an input tax claim to be valid, the claim must be made by the person to whom the supply was made.

Where a third party pays for goods or services which are supplied to another person, the third party does not have the right to deduct input tax. This applies whether the payment was made due to a legal requirement or is simply a normal commercial practice. Examples of where this is likely to occur include

- payment of legal costs awarded against the unsuccessful party in litigation (see **34.13** below);
- payment of a landlord's costs by a tenant for the drawing up of a lease (see **41.4** land and buildings: exempt supplies and option to tax); and
- payment by a business of the costs of a viability study undertaken by a bank in respect of the business's activities (see **35.10** insolvency).

For a consideration of whether a supply has been made to a taxable person, even though it is physically delivered to a third party (e.g. in a tripartite arrangement) see *Leesportfeuille 'Intiem' CV v Staatssecretaris van Financien*, *ECJ Case 165/86*, [1989] 2 CMLR 856 (TVC 22.417) (petrol supplied to employees) and *C & E Commrs v Redrow Group plc*, HL 1998, [1999] STC 161 (TVC 36.139) (estate agents' fees for sales of existing homes paid for by builder on purchase of one of its new houses). See also the Input Tax chapter in *Tolley's VAT Cases* under the heading *Whether supplies made to the appellant*.

In *WHA Ltd v HMRC*, SC [2013] UKSC 24 (TVC 36.173A), a group of companies instituted a scheme which was intended to allow the recovery of input tax charged on repair services made under insurance policies relating to vehicle breakdown. The scheme involved the use of two Gibraltar insurance companies, one of which (V) appointed a UK company (W) to handle claims and pay the repair bills. HMRC rejected the repayment claims, considering that the garages were making their supplies to the insured customers, rather than to W. W and V appealed, contending that the garages were supplying their services to W, which in turn was making onward supplies to V. The VAT Tribunal rejected this contention and dismissed the appeals, finding that there was no evidence showing that the benefit of the garage's supply of labour and parts was used for the purposes of W's business. There was no supply by W to V of the benefit of the supplies of labour and parts. The Supreme Court unanimously dismissed the companies' appeals. The garages had not made any supplies of repair services to W. The payments which W had made to the garages simply fulfilled the obligations which one of the insurance companies had undertaken to its customers. W was simply acting as a paymaster.

In *HMRC v Aimia Coalition Loyalty UK Ltd (aka Loyalty Management UK Ltd)*, L operated a points scheme in which a customer, purchasing goods or services from a participating retailer, received points which could be redeemed for 'rewards' from certain suppliers ('redeemers'). L paid the redeemers for these rewards and reclaimed input tax. HMRC rejected the claim on the basis that the rewards were supplied to the customers, not L. The Court of Appeal held that the redeemer made a supply of rewards to the customer. But the redeemer also made a supply of redemption services to L, in respect of which L was entitled to input tax credit ([2008] STC 59). The House of Lords referred the case to the ECJ, which ruled that L's payment to the redeemer was third party consideration for a supply by the redeemer to the customer, although payment might also include consideration for a separate supply of services (a question for the national court to decide) [2010] STC 2651 (TVC 22.155). The Supreme Court upheld the Court of Appeal decision in favour of L. The Supreme Court held that VAT should be chargeable on L's taxable supplies only after deduction of the VAT borne by L's necessary costs. This included the cost of securing that goods and services were provided to collectors in exchange for their points, i.e. the payments made by L to the redeemers. Therefore L should be authorised to deduct from the VAT for

which it is accountable the VAT charged by the redeemers, so that it accounted for VAT only on the added value for which it was responsible ([2013] STC 784 (TVC 22.155A)).

In *HMRC v Airtours Holiday Transport Ltd* [2010] UKUT 404 (TCC) (TVC 36.174), a large holiday company suffered financial difficulties. It agreed that a major accountancy firm (P) should liaise on its behalf with its banks, bondholders and other creditors, and prepare a detailed report on its financial status. The holiday company reclaimed input tax in respect of P's supplies. HMRC issued assessments to recover the tax, on the basis that the supplies had actually been made to the holiday company's creditors, rather than to the company itself. The Upper Tribunal upheld the assessments, finding that the company's creditors had first approached P, and contracted for the work and therefore authorised it.

Supplies to employees

HMRC accept that, in certain circumstances, a supply which is *prima facie* to an employee, can be treated as made to the employer provided the employer meets the full cost and the supply is legitimately financed by the employer for the purposes of the business. Examples include

- road fuel (see **45.15** motor cars);
- subsistence costs (see **34.13**(21) below); and
- removal expenses arising from company relocations or transfer of staff (see **34.13**(18) below).

See also *Stormseal (UPVC) Window Co Ltd* (VTD 4538) (TVC 62.245) where the tribunal held that the company was also entitled to recover input tax on hotel accommodation in respect of *self-employed* representatives whom the company required to work outside their normal area as the accommodation was made available to them in their capacity as persons engaged on company business.

Example:

A business is borrowing some money from a bank to develop its trading activities. A condition of the loan, which is secured against its property, is that the business must pay for a survey fee on the property to ensure adequate security is in place for the bank.

In this situation, the business cannot claim input tax on the survey fee, despite the fact that it has paid the cost, including VAT. The surveyor is working for the bank, not the borrower, so a key condition for input tax recovery is not being met.

5. Taken from 'Penalties' chapter

Civil penalties

[52.37]

The following civil penalties legislation came into effect on 1 April 2013 to tackle dishonest conduct by tax agents.

Failure to comply with file access notice

A person who fails to comply with a file access notice (see **31.18** hmrc: powers) (which includes concealing or destroying a required document, or arranging for such concealment or destruction) is liable to a penalty of £300. If the failure continues after the notification of the penalty, he is liable of a further penalty of £60 per day. No penalty arises if HMRC have allowed further time for compliance, and the person complies within that time.

HMRC may assess the amount due by way of penalty and must notify such an assessment to the person concerned. An assessment must be made within 12 months of the date on which the person became liable to the penalty. The penalty may be enforced as if it were income tax charged in an assessment and due and payable, and must be paid within 30 days of its notification or, in the case of an appeal, within 30 days of the date of the withdrawal or determination of the appeal. A right of appeal is given in respect of a decision that a penalty is payable, or in respect of the amount of the penalty.

A person is not liable to a penalty under this provision

- in respect of anything of which he has been convicted of an offence;
- in respect of anything of which he is personally liable to a penalty under
    - *FA 2007, Sch 24* (penalties for errors);
    - *FA 2008, Sch 41* (penalties for failure to notify, etc);
    - *FA 2009, Sch 55* (penalties for failure to make a return);
- if he has a reasonable excuse for his conduct.

[*FA 2012, Sch 38 paras 22–25, 29–34; SI 2013/279*].

Dishonest conduct

An individual engages in dishonest conduct if, while acting as tax agent, he does something dishonest with a view to bringing about a loss of tax revenue, regardless of whether such a loss arises, or whether he is acting on his client's instructions. Such a loss may arise from paying less tax or claiming more tax, or by advancing a tax claim or deferring a tax payment, in a way which is not permitted by law. A dishonest action includes dishonestly omitting to do something, or advising/assisting a client to do something dishonest. The penalty for dishonest conduct is a minimum of £5,000, and a maximum of £50,000. The actual level of the penalty will depend on whether the conduct was disclosed to HMRC (and if so, whether the disclosure was prompted or unprompted, and the quality of the disclosure), and the quality of the individual's compliance with any related file access notice. HMRC may reduce the penalty below the £5,000 limit, or stay the penalty, or agree a compromise in relation to proceedings if they think it right because of 'special circumstances'. Such special circumstances do not include

- the ability to pay; or
- the fact that a loss of tax revenue from a client is balanced by an overpayment by another person (whether or not a client).

HMRC may assess the amount due by way of penalty and must notify such an assessment to the person concerned. However, such an assessment may only be made if a 'conduct notice' has been issued to the person and any ensuing appeal has been resolved in favour of HMRC. A conduct notice is a notice issued by HMRC to an individual stating that they have determined that that individual is engaging in, or has engaged in, dishonest conduct. The notice must state the grounds on which the determination is made. An assessment must be made within 12 months of the later of

- the first day on which HMRC may assess the penalty, i.e. the day following the expiry of the time limit for any appeal against the conduct notice, or the day following the resolution of any appeal; and
- day X.

Day X is

- if a loss of tax revenue is brought about by the dishonest conduct, the day immediately following (a) the end of the period in which an appeal may be brought, or (b) the resolution of such an appeal, against the assessment or the determination of the revenue lost; or
- the day on which HMRC ascertain that no loss of tax revenue has been brought about by the dishonest conduct.

The penalty may be enforced as if it were income tax charged in an assessment and due and payable, and must be paid within 30 days of its notification or, in the case of an appeal, within 30 days of the date of the withdrawal or determination of the appeal. A right of appeal is given in respect of the amount of the penalty.

A person is not liable to a penalty under this provision

- in respect of anything of which he has been convicted of an offence;
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    - *FA 2007, Sch 24* (penalties for errors);
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    - *FA 2009, Sch 55* (penalties for failure to make a return).

[*FA 2012, Sch 38 paras 3, 4, 26, 27, 29–34; SI 2013/279*].