



## The latest in VAT for general practitioners (2018)

31<sup>st</sup> July 2018

Before viewing this webinar, please visit [www.lexiswebinars.co.uk/test-your-system](http://www.lexiswebinars.co.uk/test-your-system) to ensure that your network and PC are configured correctly.

Tip: Press F11 on your keyboard to enlarge the webinar player.

---

## The latest in VAT for general practitioners (2018)

The law as stated during this webinar is up to date as of **24<sup>th</sup> July 2018**

---

# Introduction

LexisNexis® Confidential

3

---

**Sarah Black**  
Barrister  
11 New Square

LexisNexis® Confidential

4

## Taxable Supply

### *Wakefield College v HMRC*

LexisNexis® Confidential

5

### Wakefield College

- Taxpayer a charity providing educational courses
  - Some courses fully paid for by student;
  - Some courses subsidized by Government. If conditions met, full cost met;
  - Some students (who didn't meet conditions) paid fixed, subsidized fee.
- Question of whether third category amounted to carrying on a business.
- College built new building. Argued construction supplies were zero-rated as a building "*intended solely for use for...a relevant charitable purpose*" for VATA 1994, group 5 of Schedule 8
  - If intention was to use building in the course or furtherance of a business, the supplies would not be zero-rated.
- FTT found supplies were zero-rated. UT held were not zero-rated. Court of Appeal decision released May 2018.
  - CofA also found not zero-rated, but on different grounds.

LexisNexis® Confidential

6

## Wakefield College

---

- Decision usefully sets out main cases on this point, namely *Borsele*, *Finland* and *Longridge*.
  - Interesting comments on difference in language and meaning between French and English versions of *Borsele*.
- Stated “*in the course of furtherance of a business*” has the same meaning as “*economic activity*”
- Clearly set out that two separate questions:
  - Whether a supply of goods and services for consideration (for Art 2);
  - Whether that supply constitutes an economic activity (for Art 9).
- This is the approach to be taken (subject to appeal to SC) to determine whether an economic activity or not.
- Implications for all charities claiming relief on construction supplies.

LexisNexis® Confidential

7

## Loyalty Schemes and input tax recovery

### *Tesco Freetime and Marriott Rewards/Whitbread Group*

LexisNexis® Confidential

8

## Tesco Freetime

- Tesco Clubcard scheme
  - Members earned points on purchases
  - Points (over a certain threshold) converted to vouchers
  - Vouchers could be
    - Redeemed in store
    - Submitted to Freetime for conversion into third party tokens (e.g. for a free meal in a restaurant).
  - On reward token redemption, Freetime paid third party redeemer, although less than value of goods/services (shared cost).
- Issue whether Freetime could recover VAT on amount paid to third party redeemer

LexisNexis® Confidential

9

## Tesco Freetime

- FTT held that a separate supply of 'fulfilment services' by third parties to Freetime
  - Input tax deductible
- Freetime did not pay third party consideration for supplies to Clubcard members
  - Customer bore economic burden of scheme.
  - Costs of scheme factored into prices paid for goods in Stores.
- Could not distinguish the nectar scheme in *LMUK*
  - obliged to follow SC not CJEU
- Authorities provide that contractual position useful starting point. Not conclusive. Proper regard to be had to economic reality.
- HMRC have appealed to UT – November 2018.

LexisNexis® Confidential

10

### Marriott Rewards/ Whitbread Group

- Marriott Rewards (US Co) operated reward scheme
  - Participating hotels (including those run by Whitbread) made payments to MR for points which would award to customers of scheme
  - Customers could use points for stays at redeeming hotels.
  - MR would pay redeeming hotel
- MR reclaimed VAT on basis that payments to redeeming hotels consideration for services provided by those hotels
  - HMRC argued third party consideration
  - Further issue on whether i) supplies were advertising services (Whitbread argued) or ii) connected with immovable property (MR argued). Based on place of supply rules.
- UT held payment was in return for a supply to MR from redeeming hotel. Not third party consideration. Indistinguishable from *LMUK SC*.
  - supply of “generic service of agreeing to provide Reward Stays”

LexisNexis® Confidential

11

### Marriott Rewards / Whitbread Group

- Different loyalty schemes have different contractual arrangements which can fundamentally change VAT analysis. Three models (at least):
  - Own customer model
    - trader issues points to own customers and accepts redemption
    - *Kuwait Petroleum*
  - Sub-contractor model
    - Trader issues points; sub-contractor supplies goods/services to customer on redemption; trader pays sub-contractor cost + profit
    - *Baxi CJEU*
  - Separate operator model
    - Separate entity issues points as part of distinct business; points paid for by retailers; entity paid redeemers
    - *LMUK SC*
- In Contract v economic reality debate – current emphasis on reading contracts so that they work
  - Agreements need to be clear what supplies being made.

LexisNexis® Confidential

12

# Compound Interest on Overpaid VAT

## *Littlewoods*

LexisNexis® Confidential

13

### Littlewoods

- Littlewoods incorrectly accounted for and overpaid VAT on commission paid in kind to agents.
  - HMRC repaid principal sum and interest on simple basis
  - Littlewoods claimed interest on compound basis
  - Supreme Court – November 2017 – no compound interest.
- 2 issues
  - whether common law unjust enrichment claim or confined to s78 VATA
  - If only s78, whether incompatible with EU law
- CJEU reference. Both High Court and Court of Appeal held s78 incompatible

LexisNexis® Confidential

14

## Littlewoods

---

- SC held s78 intended to be complete regime
- Question of whether adequate indemnity achieved by something less than compound interest
  - broader term
  - Reimbursement meant full compensation of principal amount plus some form of interest
  - CJEU did not state compound interest required. Discretion for MSs to determine calculation method.
- Difference in position where a common law remedy and statutory regime for recovery and tax and interest.
- Likely will be relied on in direct tax as well

LexisNexis® Confidential

15

---

## VAT recovery and builders block

### *Taylor Wimpey plc*

LexisNexis® Confidential

16

## Taylor Wimpey Plc

---

- TW claiming input tax recovery in relation to installation of various ‘white good’ appliances and carpets in new-built homes
  - *Fleming* claims
- Two decisions in FTT. Two decisions in UT.
- ‘Builder’s Block’ excludes recovery of input tax on appliances installed by property developers
  - issue whether the block applied to appliances in question
  - In First UT decision, held Builder’s Block was lawful under EU law. Provided guidance on the application for parties to agree – but could not.
- TW argued block did not apply as
  - Items were not ‘incorporated’ into the building
  - Alternatively, if they were then ‘ordinarily installed as features’

LexisNexis® Confidential

17

## Taylor Wimpey Plc

---

- Items were either fixtures or installed fittings so within remit of block
  - Only one item, in certain period, was ‘ordinarily installed’ and so within exclusion
- ‘Incorporation’ does not require item to be integrated
  - UT held item will be incorporated if a fixture or “installed as a fitting”
- ‘Ordinarily’ will be unless “*its installing or incorporation would be out of the ordinary, uncommon or unusual...whether the installation or incorporation...is at the relevant time commonplace or not out of the ordinary.*”
  - Not equated to likelihood
  - Determined at time when deduction claimed, not when legislation introduced
- Useful guidance for determining what is within the block.

LexisNexis® Confidential

18

---

**Disclaimer**

This presentation and accompanying webinar should not be treated as “advice” that may be relied on by businesses or individuals or for the purposes of advising clients.

Specific specialist advice should be sought in relation to and in the light of the particular facts and circumstances of each case.

---

**Forthcoming Tax for General Practice Webinars**

- **Advising family businesses (2018)** – 25<sup>th</sup> September 2018
- **Key provisions of the Finance Act 2018** – 30<sup>th</sup> October 2018
- **Tax for General Practice end of year round-up (2018)** – 27<sup>th</sup> November 2018

## On Demand Tax for General Practice Webinars

- **Capital allowances in 2017** – Available until 3<sup>rd</sup> May 2018
- **Inheritance Tax and trusts in 2017** – Available until 7<sup>th</sup> June 2018
- **The latest in VAT for general practitioners** – Available until 19<sup>th</sup> July 2018
- **SDLT & VAT in 2017** – Available until 20<sup>th</sup> September 2018
- **Tax for general practice end of year round-up 2017** – Available until 29<sup>th</sup> November 2018
- **Real estate tax update** – Available until 7<sup>th</sup> December 2018
- **Capital Gains Tax and Entrepreneur's Relief (2018)** – Available until 27<sup>th</sup> February 2019
- **Capital allowances in 2018** – Available until 27<sup>th</sup> March 2019
- **Inheritance Tax and trusts in 2018** – Available until 24<sup>th</sup> April 2019
- **Real estate tax update (2018)** – 26<sup>th</sup> June 2019

LexisNexis® Confidential

21

## Thank you and reminders

- This webinar is designed to help solicitors meet requirements A2 (Maintain competence and legal knowledge) and A4 (Draw on detailed knowledge/understanding) of the SRA's Statement of solicitor competence. You may also use the quiz, which can be accessed via the "Take a quiz" link on the webinar details page, to reinforce your understanding of the webinar content. You should answer 7 out of 10 questions correctly and will have two attempts at the quiz.
- Please submit feedback via the survey screen.
- This webinar will be archived immediately, and will be available to view on-demand for 12 months.
- A transcript of the webinar can be made available on request within 48 hours.
- You can use the training and evaluation record form which is included in the supporting materials for this webinar to log this training activity and how it relates to the continuing competences that the SRA requires from all solicitors.

If you have any queries, please contact us:

[webinars@lexisnexis.co.uk](mailto:webinars@lexisnexis.co.uk)

(0)330 161 2401

 @LexisUKWebinars

LexisNexis® Confidential

22

**Thank you for attending.  
We hope you've enjoyed this session.**



**Bespoke in-house training solutions**

- Tailored for your business
- Extensive portfolio of expert presenters
- All areas of legal practice covered
- Location of your choice

[Find out more](#)

