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Litigation and disputes in VAT and Indirect Tax (2020)
25th February 2020

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Litigation and disputes in VAT and Indirect Tax (2020)

The law as stated during this webinar is up to date as of **20th February 2020**

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Introduction

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Premier Family Martial Arts LLP v HMRC [2020] UKFTT 1 (TC)

- PFMA provides private kickboxing tuition.
- PFMA has previously relied upon Article 132(1)(j) of Directive 2006/112/EC which provides that "tuition given privately by teachers and covering school or university education" is exempt from VAT.
- HMRC accepted that PFMA provided "tuition given privately" but not that it "covered school or university education" and therefore could not rely on the VAT exemption.
- The FTT was asked to look at 'martial arts' as the subject, kickboxing being a sub-set of this. The Court rejected this was sufficient to pass as being normally taught within schools.

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NCP v HMRC [2019] EWCA Civ 854

- The case concerned car park ticket machines that do not return change to the customer.
- Customers therefore made overpayments when paying to park.
- The Court of Appeal stated that as a matter of contract law, the contract price was agreed when the customer put the money in the machine and pressed the button to issue the ticket. Therefore, if the customer didn't have the correct change and overpaid, the price displayed was not the contract price but the price actually paid was.
- NCP unsuccessfully argued that the over payments were ex-gratia payments.
- The taxable amount is everything that constitutes consideration in return for supply.
- Consideration has an autonomous EU-wide meaning.
- All the elements of a contract had been satisfied for the sums to be deemed the contractual price.

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News Corporation UK and Ireland Ltd v HMRC [2019] UKUT 0404 (TCC)

- Newspapers are zero-rated for VAT purposes under Schedule 8, Part II, Item 2 of VATA 1994.
- The UT held that digital editions of newspapers also fell within this exemption and were therefore zero-rated too.
- The UT looked at Parliament's purpose of the exemption and the legislation and decided the zero-rating of newspapers was to promote literacy, accountability, and democracy.
- Digital editions considered to accord with Parliament's purpose and the UT held they should therefore fall within the exemption.
- The UT also looked at other characteristics of digital and print newspapers to decide whether they were sufficiently similar. For example, an important factor was the timing of digital updates. If digital newspapers were updated at set intervals, this was seen to be sufficiently similar to new prints of newspapers.

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Marks and Spencer plc v HMRC [2019] UKUT 182 (TCC)

- M&S made a promotional offer which allows customers to select three food items for £10 plus a free bottle of wine.
- M&S argued the bottle of wine was a freebie and therefore they didn't have to account for VAT on it.
- The court held that the wine formed part of the £10 deal and was therefore subject to VAT.
- The court assessed the facts of the situation and concluded the wine was not free if you were not buying the three food items as well i.e. the only way to obtain the wine was to buy the other three food items. The £10 should therefore be apportioned between all the goods and the wine be accountable for VAT.
- The court stated that the word 'free' in this instance was purely for promotional purposes.

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Good Law Project v HMRC (Uber an interested party) [2019] EWHC 3125

- The Good Law Project is an crowdfunded organisation that brings strategic legal cases to court to challenge how the law works and to drive demand for further law reform.
- They brought a judicial review action against HMRC for failing to make protective assessments against Uber in respect of unpaid tax.
- HMRC's failure to issue protective assessments meant that recovery of the unpaid tax would become time-barred.
- The Court had to balance the competing needs of taxpayer confidentiality and open justice in deciding whether HRMC should disclose whether they had raised protective assessments.
- The Court decided that is was lawful to disclose confidential information in civil proceedings.

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SAE Education v HMRC [2019] UKSC 14

- Revenue and Customs Brief 5 (2019) explains the changes to VAT rules for HE providers from 1 August 2019.
- The Supreme Court was asked to determine whether a provider of education was a "college of a university" within the meaning of Sch 9, Part II, Group 6, Item 1, Note 1(b) of the Value Added Tax Act 1994.
- SAE Education is a subsidiary of a global group of companies that provided educational courses through an English university.
- The university validated the Appellant's courses and students enrolled on its courses were awarded degrees by the university on completion of its course.
- The Courts applied both the integration test and looked at the legal relationship between the provider and the university to determine whether it was a college.
- The Supreme Court concluded that to be a college the provider did not have to form a part of the university in a constitutional or structural sense, but its objects and the nature of the educational services had to be examined to determine whether there was a sufficient level of integration with the university.

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Eynsham Cricket Club v HMRC [2019] UKUT 0286

- Eynsham Cricket Club's pavilion was destroyed in a fire. They engaged a contractor to build a new pavilion.
- The Cricket Club is registered as a Community Amateur Sports Club, not a charity.
- The club believed the new pavilion could be zero-rated for VAT because it would be classed as a 'relevant charitable purpose' building.
- The new pavilion could be hired for private functions on days that cricket was not being played. HMRC successfully argued that this meant the pavilion fell outside of the exemption.
- In addition, HMRC were also successful in arguing that an organisation could not be both a Charity and a Community Amateur Sports Club. As it was registered as a Community Amateur Sports Club, it could not rely on an exemption available to charities.

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Auto-Kit International Ltd v HMRC [2019] UKFTT 534 (TC)

- Auto-Kit International Ltd appealed a customs civil evasion penalty imposed under s25(1) of the Finance Act 2003.
- The Claimant is an importer of fabric and leather car seat covers into the UK from outside the EU.
- HMRC advised the company was using the incorrect commodity code resulting in the underpayment of duty and failed to add a 17% uplift to take account of materials provided free of charge.
- The company paid the underpaid duty but continued to use the wrong codes and fail to account for the uplift.
- HMRC accused the company of engaging in dishonest conduct.
- HMRC eventually imposed the civil evasion penalty.
- The Company appealed this decision.
- The Company was successful in its appeal and had the penalty overturned. The Tribunal found that HMRC had failed to establish the mental state of the company director was dishonest by ordinary standards.
- The director had failed to address several technical issues in relation to the duty and uplift, but had not done so dishonestly.

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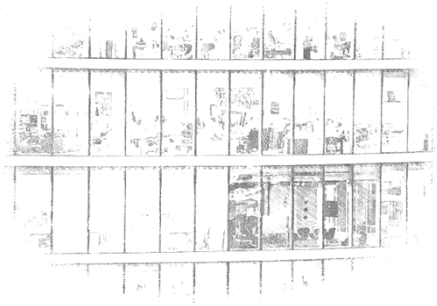

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