

Charity wristbands and text messages

In response to the current craze for collecting different coloured wristbands to show support of various charities, HMRC have confirmed that the sale of such bands for a fixed price is subject to VAT, but if they are freely given to acknowledge a donation (even if the level of donation is suggested by the charity) there is no VAT.

There is already a UK concession with regard to charitable text messages, whereby mobile phone operators have to establish which part of the price of the text message refers to their telecommunication service and which part is for the charity. The charitable portion will not be taxable but will be treated as a donation outside the scope of VAT.

Advertising packages – Printed matter

Those of you who can not recover all your VAT and who spend money on printed matter advertising packages may find the Tribunal case of Charterhall Marketing of interest. The case discusses the package test for printed matter and looks at whether an advertising mailshot of leaflets and a covering letter was a single composite standard rate supply of a letter with ancillary leaflets, (which Customs said were not separate zero rate supplies as the leaflets could not “stand alone” without the letter) or a package of printed matter (multiple supply) that was all zero rated because the zero rate leaflets outnumbered the standard rate letter (which was the taxpayer’s argument). The taxpayer won.

Updated Notice 742 - Land and Property

This notice cancels and replaces Notice 742 (December 1995) and incorporates Update 1 (December 2003) and Update 2 (April 2005).

This notice explains when transactions involving land and buildings are exempt from VAT. It looks at what constitutes a supply of land, and how to determine the liability of that supply. Update 1 (Dec 2003) and Update 2 (Apr 05) are included in this notice.

Principally, the Notice has been expanded to provide comment on the Commonhold and Leasehold Reform Act 2002, and covers the issue that English law now recognises three forms of holding property; freehold, leasehold and commonhold.

Interestingly the update does not include any change to Customs' current policy on inducements. Recently, Customs have accepted (on a case by case basis) that an inducement does not represent a taxable supply. For the time being there is no general principle and traders should apply for a ruling in each case. A further update to Notice 742 may follow.

Virtual assignment of a lease as good as a legal assignment

The High Court has ruled that the 'contractual' assignment of the benefits of a lease remains a supply of an interest in land. This will provide comfort to businesses involved in land and property transactions where assignments of a lease in breach of contract, or virtual assignments of a lease, is not an uncommon practice.

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Can publicly funded research be a business activity?

The answer may be "yes" or it may be "no". Each has implications for input tax recovery. In this case, the Tribunal concluded that publicly funded research was not a business in itself and nor was it part of a single business carried on by the university. However, Customs accept that grant funding in itself does not make research a non-business activity - the objectives of the research need to be considered.

Standard of proof in civil penalty cases

The High Court has previously concluded that proceedings under s 60 VAT Act 1994 (the civil evasion penalty) involve a criminal charge. Further, they have also held that the burden of proof is not a mere balance of probabilities but a high degree of probability, which is in contrast to the position in Scotland. This judgment provides further guidance on the standard of proof required.