

VAT treatment of FOREX transactions

Clients in banking, investment management and pension sectors may have the opportunity to make VAT reclaims to recover VAT on third party fees relating to hedging positions, whether on currency or interest rates.

It may also be possible to exclude hedging contracts from partial exemption calculations where they have previously been treated as exempt income.

In a recent tribunal case, it was held that a pension fund did not make VAT exempt supplies under FOREX contracts entered into to hedge positions on non sterling equities because there was no consideration for any supply by the pension fund. This would be the case even where the hedge resulted in a profit because of favourable movements in the underlying currency. As a result, the taxpayer was able to recover VAT incurred on its advisor's and agent's fees as residual input tax.

The tribunal also commented that the same treatment would apply to other transactions such as currency swaps.

New Civil Investigation of Fraud Procedures

From 1st September there are important changes. Up until now, both HM Customs and Excise and the Inland Revenue had procedures for tackling serious acts of evasion using civil powers. The former Inland Revenue's Hansard procedures and the former Customs & Excise Civil Evasion procedures (excluding Customs Duties Civil Evasion Penalties applied to traveller at ports and airport controls) have now been replaced with a common Civil Investigations of Fraud procedure within HM Revenue & Customs. Future cases will be under a new Code of Practice 9 (New). Existing cases will be worked to a conclusion under the old Hansard procedures, and it is intended that the procedure will only be used by officers serving in HMRC Special Civil Investigations.

The main procedural change will impact on the former Inland Revenue Hansard policy, under which it will **not** be necessary to conduct interviews under caution or to tape record those meetings. This means that HMRC will not prosecute for the fraud under the new civil procedures, but there is a prosecution sanction but only for making a materially false disclosure (including deliberate false statements during the course of the investigation or furnishing false documents at the conclusion of that investigation).

Once the new procedure is introduced, where suspicions of irregularities cut across direct and indirect taxes, one single meeting can be held to cover all regimes. However, the meeting will be structured so that each tax is covered separately using powers appropriate to that tax; and so that it is clear at all times to the taxpayer which tax is being dealt with and what information is being requested for which tax.