

VAT treatment of samples

[Revenue & Customs Brief 51/10](#) announces that HMRC has changed its policy on the VAT treatment of samples, and will amend the UK VAT legislation in Finance Bill 2011. In the meantime, HMRC invites claims from businesses which may have overpaid VAT on samples, subject to time limits and unjust enrichment provisions. However HMRC's policy on VAT and business gifts remains unchanged.

The changes have come about as a result of the ECJ ruling in EMI Group Ltd (C-581/08) concerning the UK's rules on the VAT treatment of business gifts and samples.

Whilst the ECJ endorsed the UK's VAT legislation applying VAT to business gifts over a certain value and over a certain cumulative value given to the same recipient over the course of a year, the ECJ disapproved the UK legislation restricting VAT relief to only the first sample in a series, and treating samples given to the employees of a single employer as a series of samples given to the same person. The ECJ also specified that the term 'sample' should be restricted to items given away in order to enable the recipient, either a potential consumer or a person in a position to influence other potential consumers, to examine the properties of the donor's products with a view to purchase.

HMRC will amend the UK legislation on samples in order to conform with the ECJ's judgment. They invite claims from businesses which may have overpaid output VAT on business samples, subject to the usual time limits for claims under s 80 VAT Act 1994, and to unjust enrichment provisions. HMRC's views on business gifts remain undisturbed.

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