

February 2024

## Working 9 to 5

Determining whether expenditure is recoverable and relates to onward taxable supplies is something we frequently discuss with clients. This month saw an interesting case where HMRC had disallowed several VAT repayments by Passion Incorporated Ltd, which was subsequently challenged at FTT. In both the review and the FTT case, the director had shown a material misunderstanding of what he was able to claim and more so the need to prove the link to taxable supplies. Indeed it was the nature of the expenditure which prompted the investigation and resulted in HMRC challenging the claim.

An example of this misunderstanding was when he commented that any expense incurred by him during his working day in his role as company director should be recoverable. However this included items that would normally be considered as personal rather than business use - such as music subscriptions, personal healthcare items, club memberships and entertainment.

Unsurprisingly the FTT found in favour of HMRC, showcasing the risk of having a lack of understanding of the complexities of VAT. In summary, just because the costs are through the business doesn't make the VAT recoverable - they need to be necessary and linked to the making of taxable supplies.

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Another case this month saw an appeal to the Upper Tribunal by HMRC in its case against Hippodrome Casino Limited (HCL) concerning the apportionment of its residual input tax. HCL had relied on a floorspace method by way of standard method override (SMO) to displace the standard method of apportioning residual input tax.

In the FTT appeal the tribunal found that HCL's means of apportioning and recovering input VAT on overhead expenditure by reference to floorspace more accurately reflected the economic use of that expenditure than the standard income-based method.

HMRC challenged the decision on the basis that the FTT had failed to address their contention that the floorspace being considered in the method for taxable supplies of entertainment was also being used for non-taxable supplies of gaming. They believed that the floor space method was fundamentally flawed as areas such as the bars and restaurant were not only used for the purpose of hospitality and entertainment but were also used economically as important amenities for HCL's exempt gaming.

Whilst the Upper Tribunal acknowledged the problems of using the standard method, they also noted that the burden to prove that an alternative method provides a more precise measurement than the standard method lies with HCL. They could not accept that the floorspace SMO did this, and found in favour of HMRC.

## HMRC Flip Flop

Earlier this month HMRC quietly announced plans to close a loophole in company car tax from 1 July that would have seen a change to how double-cab pickups were treated for company car tax. Since 2002 HMRC has interpreted the legislation in line with the definitions used for VAT. This proposed change would have seen that stance change, however due to the criticism received from farmers and the motoring industry the Government quickly decided to abandon the plans.

So whilst the changes would have had no impact to the VAT treatment of these vehicles, it was an interesting turn of events and certainly one welcomed by many.



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