



KEY ISSUES

- Insolvency
- MTIC due diligence
- Customs Audits

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A recent VAT case, Paymex Ltd, won an appeal regarding the **services of Insolvency Practitioners**. HMRC had initially deemed that services in connection with **consumer IVA's** were taxable supplies for VAT purposes. The company appealed, claiming the services should be **exempt** as they fall within **legal provisions for exempt financial services**. The tribunal accepted the contention, allowing the appeal saying that the services in question were indeed related to debts, and the alteration of the situation of the debtors and creditors involved therein. This could be relevant to insolvency practitioners and individuals entering IVA's with unsecured debts, as it should reduce their costs.

There was positive outcome for **scrap metal businesses** in London Wiper Company Ltd's recent appeal against an HMRC decision to **disallow its input tax paid to certain suppliers**. The suppliers in question were found to be **"missing traders"** – they were either not registered for VAT, or had provided false business addresses. HMRC had initially held that the invoices were not valid, and that London Wiper could **not reclaim the input VAT it had paid**, as it should have established this **prior to dealing with the suppliers**. However, on appeal, although it was held that the invoices were indeed invalid – incorrect dates, non-existent dates and false addresses for example – it was evidenced that the goods had actually been delivered to London Wiper Company Ltd, and that it **had carried out sufficient checks** on the companies in question. This was underlined by the fact that HMRC had already accepted that one supplier existed in the past, as previous invoices had been paid by cheque to that supplier, with HMRC not querying the input tax at that point. London Wiper showed that it had checked the VAT registration of the suppliers, and done **appropriate due diligence** to be allowed to reclaim the input tax paid to them. Whilst the onus is increasingly upon the purchaser in these situations to prove a new supplier's validity, this result illustrates that HMRC will take into account steps taken by the taxpayer to check that validity wherever possible.

There is likely to be increasing significance attached to a Customs Audit, following recent criticism of HMRC's control of customs matters and audits. For those with clients who import, it is vital to emphasize the need for having robust systems in place, and minimizing the risk of compliance failures. Importer's customs compliance is subject to an audit-based control. Errors can lead to collection of underpaid duties, penalties, the removal of duty reliefs and delays in clearance of goods. Remember the correct classification, codification and valuation of goods are basic compliance requirements, along with a knowledge of customs procedures.

In the recent VAT Upper Tribunal case of SR International the taxpayer won its appeal after losing in the First Tier Tribunal. The case related to a US based organisation which was seeking to recover VAT under the 13th Directive procedure which allows VAT refunds in specified circumstances to non-resident businesses. VAT incurred on costs for EU and non EU businesses can be claimed under this procedure and is now simpler than in the past. The case demonstrates that claims can be made for a variety of costs and rejection by HMRC should never be assumed to be correct. The sums involved in such claims can vary between smaller sums on expenses to larger costs incurred for example, on warranty repair work or as in this case on property costs.

HMRC has issued Notice 701/35, explaining the definition of a **youth club, or association of youth clubs**, for VAT purposes, and when supplies made by them are **exempt from VAT**. This notice outlines how the facilities of a youth club are supplied, and in what circumstances they are exempt.