

VAT on employee mileage claims

Avoid the VAT hazard



Potential repayment of VAT...

In March 2005 we reported on a new twist in VAT law (see TT62). This arose as a result of the European Court of Justice ("ECJ") handing down a ruling that UK law on employee-incurred expense payments was contrary to European law (essentially the UK allowed VAT registered traders to reclaim VAT incurred by employees on certain motor and subsistence expenses).

To re-cap, the UK rules were declared wrong because:

- the employee incurring the expense was not the VAT registered trader and the employer (the VAT registered person) was not being supplied directly;
- the employers did not hold a valid VAT invoice (the 40p per mile Authorised Mileage Rate claim for using a private vehicle for business use or the Advisory Fuel Rate for claiming business fuel on a company car were not considered VAT invoices).

The UK Government had argued that not to allow employers to claim such VAT would be unfair and to make other arrangements would place a large administration burden on those employers.

However, whilst the case went against the UK, the ECJ did acknowledge that in principle the VAT registered trader should be allowed to claim back the VAT in some way.

As at March 2005 HM Revenue & Customs ("HMRC") had not decided on a response to the ruling and was still considering the matter. They advised that while the UK law remained unchanged, they could not rule out a potential repayment of VAT being due.

...is averted!

The good news is that no backdating or VAT repayment will be necessary.

HMRC has now introduced new legislation to replace the old, under which the employer can continue to claim the VAT on mileage rates claimed by employees, but only where:

- the fuel as incurred in the process of making taxable supplies and;
- the employer holds a VAT invoice.

Therefore, the employer can continue to claim the VAT on the mileage rates paid, but must hold a VAT invoice from the employee for fuel that shows the VAT incurred, i.e. a fuel receipt from the garage. Obviously the VAT incurred on the VAT invoice provided will be more than the VAT claimed by the employer on the expense claim, as the fuel receipt from the garage will be inclusive of the employee's private fuel.

Barnes Roffe Topical Tips

- Advise employees to retain VAT petrol and diesel invoices to attach to their expense claims
- Ensure that such receipts do not post-date the mileage expenses claimed
- Review all claims back to 1 January 2006 – the date that the new regulations came into force.

Consult your Barnes Roffe LLP contact Partner for guidance in this important area.