

VAT on electronic publications

The VAT zero rate has finally been extended to electronic publications.

Bill Lewis and Susan Shi welcome the news, which they say is long overdue.



Bill Lewis Consultant

T: 020 7551 7830
b.lewis@bwbllp.com

I advise on all aspects of taxation affecting charities (VAT, PAYE, corporation tax) using my experience from a 34-year career that has included HMRC, big 4 accountants and industry. For the last 21 years I have specialised in charities.



Susan Shi Associate

T: 020 7551 7902
s.shi@bateswells.co.uk

I am a solicitor in Bates Wells' Charity and Social Enterprise team. I completed my training contract and qualified into a tax department in another city firm in September 2016, before moving to Bates Wells in February 2018. I work on a mix of charity and charity tax matters.

The sector has for many years lobbied government for the VAT zero rate on printed publications of books, newspapers, magazines, journals and leaflets to be extended to their electronic equivalents. The law has not kept pace with technology – and there was a VAT disincentive from going green.

In October 2018, the Council of the European Union adopted a directive that allowed member states to use the same VAT rate for electronic publications as for the printed versions. This meant that it was no longer mandatory for member states to exclude e-publications from any reduced or zero rates allowed on publications printed on paper. The UK took no action following this directive; electronic publications remained subject to the standard rate of VAT.

However, in a significant ruling in December 2019, the Upper Tier Tribunal determined in *News Corp UK & Ireland Limited v HMRC* that digital newspapers constitute 'newspapers' within the meaning of Item 2 Group 3 Schedule 8 of the Value Added Tax Act 1994. This means that they qualify for the VAT zero rating.

The case was brought by the publisher of *The Times* and *The Sunday Times* (print and digital editions). Both the publisher and HMRC agreed that a newspaper's essential characteristic is that it is produced in periodic editions (that is, not rolling news, such as the Guardian website or BBC news). The publisher produced its digital newspaper in e-reader, tablet, website and smartphone editions. All were either exact copies of the print edition, or contained small updates made during the day (three updates during the day, compared to two editions of the print version). The digital editions also contained some extra content (short news videos, interactive puzzles, links to podcasts and some different photos).

The court had to decide whether the digital editions were still 'newspapers',

and if the existing legislation (dating from 1972) should be interpreted in keeping with technological developments. It decided that 'in the round', the digital editions were 'essentially' the same as the newsprint editions. The collective factors it considered were:

1. the digital editions were also periodic editions (three updates during the day);
2. the written content of the print and digital versions was 'fundamentally the same or very similar';
3. the updates to the digital versions were relatively minor; and
4. the additional content that could not be provided in newsprint was a 'relatively minor' aspect of the digital editions.

The *News Corp* case was a victory for the taxpayer, and HMRC stated it would appeal to a higher court. However, in the March 2020 Budget, the government decided it was time the law was modernised and announced it would change the UK law with effect from December 2020 to extend the VAT zero rate on paper publications to the electronic equivalent. In April 2020, in response to the coronavirus pandemic, the government announced that the implementation date would be brought forward to 1 May 2020, with a view to reducing the cost of access to online publications at a time when many people were confined to their homes and schools were closed.

This is very good news for charities, which need no longer feel forced to maintain printed versions of their newsletters or other publications; they can switch to electronic versions without suffering a VAT penalty.