



**Edition 1**  
28 May 2020

## V@

Welcome to the first edition of RPC's V@, an update on developments in the VAT world that may impact your business.

We hope you enjoy reading our new publication. If you have any feedback on the content or format, please let us know or get in touch with your usual RPC contact.

## News



### **Treasury makes the Value Added Tax (Zero Rate for Personal Protective Equipment) (Coronavirus) Order 2020 extending zero-rating to personal protective equipment**

On 29 April 2020, the Treasury made the Value Added Tax (Zero Rate for Personal Protective Equipment) (Coronavirus) Order 2020, which came into force on 1 May 2020.

The Order adds a new Group 20 (Personal Protective Equipment (Coronavirus)) to Schedule 8, Value Added Tax Act 1994 (**VATA 1994**), thereby extending zero-rating to supplies of equipment to provide protection from infection made in the period from 1 May 2020 to 31 July 2020.

The provision applies to personal protective equipment recommended for use in connection with protection from infection with coronavirus in guidance published by Public Health England on 24 April 2020, titled: "Guidance, COVID-19 personal protective equipment (PPE)".

The new Group 20 excludes supplies in Group 12 (Drugs, Medicines, Aids for the Disabled, Etc.) and Group 15 (Charities Etc.) of Schedule 8, VATA 1994, and any supplies that would be exempt by virtue of Group 7 (Health and Welfare) of Schedule 9, VATA 1994.

The Order can be viewed [here](#).



### **Treasury makes the Value Added Tax (Extension of Zero-Rating to Electronically Supplied Books etc.) (Coronavirus) Order 2020**

On 29 April 2020, the Treasury made the Value Added Tax (Extension of Zero-Rating to Electronically Supplied Books etc.) (Coronavirus) Order 2020, which came into force on 1 May 2020.

The Order amends Group 3 of Schedule 8, VATA 1994, to extend zero-rating to (a) books, booklets, brochures, pamphlets and leaflets, (b) newspapers, journals and periodicals, and (c) children's picture books and painting books, when supplied electronically.

Publications which (a) are wholly or predominantly devoted to advertising, or (b) consist wholly or predominantly of audio or video content, are excluded from zero-rating.

The Order can be viewed [here](#).



### **HMRC publishes guidance on notifying an option to tax land and buildings during COVID-19**

On 14 May 2020, HMRC published guidance which temporarily changes the way taxpayers need to notify an option to tax land and buildings during coronavirus.

The guidance extends the time limit to notify HMRC of a decision to opt to tax land and buildings from 30 days to 90 days from the date the decision to opt was made. This applies to decisions made between 15 February and

31 May 2020.

HMRC will accept forms with an electronic signature, although suitable evidence must also be provided to prove that, where applicable, (a) the signature is from a person authorised to make the option on behalf of the business, and (b) authority has been granted to the agent by the business to use the electronic signature.

The guidance can be viewed [here](#).

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## Case reports



### Virgin Media - fixed line rental services were not "supplied on terms allowing a discount for prompt payment"

In *Virgin Media Ltd v HMRC* [2020] UKUT 100 (TCC), the Upper Tribunal (UT) found against a taxpayer which appealed against a decision of the First-tier Tribunal (FTT) upholding HMRC's decision that the prompt payment discount rules in paragraph 4, Schedule 6, VATA 1994, did not apply to certain fixed line rental services provided by the appellant to customers (**the services**).

The UT found that the supplies of services to customers who made monthly payments (**monthly customers**), and the supplies of services to customers who made a single payment in respect of 12 months of supplies (which was lower than the sum of 12 monthly payments), involved two possible contracts, each with different terms. The differences between the two sets of terms did not necessarily involve a "discount" and, even if they did, the discount was not "for prompt payment".

The UT's decision rested heavily on the specific contractual arrangements in this case. However, the decision will be of interest to other suppliers of services to retail customers which operate similar arrangements.

The decision can be viewed [here](#).



### NHS Lothian Health Board – tribunals must adopt a flexible approach to quantification of historical claims for repayment of input VAT

In *NHS Lothian Health Board v HMRC* [2020] CSIH 14, the Court of Session allowed the appellant's appeal against decisions of the FTT and the UT upholding HMRC's decision that the appellant could not recover input tax in respect of supplies made by laboratories operated by the appellant and its predecessors to persons outside the NHS. The Court set aside the decisions of the FTT and the UT and remitted the case to a differently constituted FTT for reconsideration.

The Court found that HMRC and the tribunals were incorrect to reject the appellant's claim under section 121, Finance Act 2008 (**FA 2008**) in its entirety, on the basis that the evidence available was inadequate to permit proper calculation of the claim. The Court found that the appropriate course was for the tribunals to make findings of fact on the basis of the evidence that was available and to rely on those in determining an appropriate amount of repayment of input VAT, having regard to the EU principle of effectiveness.

Although many *Fleming* claims under section 121, FA 2008, have now been settled, this judgment will be relevant to other cases in which there are evidential issues regarding the evidence a taxpayer can provide to quantify a claim against HMRC. The Court adopted a pragmatic and fair approach to issues of evidence, although this may have been influenced by the fact that the taxpayer in this case was an NHS Health Board.

The judgment can be viewed [here](#).



### Rank Group - overpaid output tax claimed out of time cannot be recovered by set-off provisions

In *The Rank Group PLC v HMRC* [2020] EWCA Civ 550, the Court of Appeal found that it was not possible for the appellant to recover the net amount of an out of time claim under section 80(1), VATA 1994, for overpaid output tax in respect of supplies of bingo which it had incorrectly treated as taxable rather than exempt (**the disputed VAT**), as a set off in relation to other accounting periods in respect of which HMRC had made repayments of net overpaid output tax, pursuant to three section 80(1) claims which the appellant made in time.

The Court gave the appellant's argument that it could recover the disputed VAT via section 81(3) and (3A), VATA 1994, short shrift, finding that it involved "a *distortion of basic VAT accounting principles for which there is no warrant in the provisions of either s.80 or s.81*".

This case involves a detailed analysis of the legislation governing taxpayer claims for reimbursement of VAT, and the manner in which HMRC should process such claims.

The judgment is a reminder of the importance of making claims under section 80 within the relevant time limits.

The judgment can be viewed [here](#).

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