

RETAILER VOUCHERS: ARE YOU DUE A VAT REFUND?

VAT Services

The Court of Appeal's ruling in *Associated Newspapers v HMRC* is now final. If you paid VAT to HMRC when you provided vouchers to staff or to customers, or failed to claim VAT on the purchase of the vouchers, you may now be due a refund.

VAT and retailer vouchers

The sale by a retailer of a voucher which can be redeemed in its stores or on its website is not a supply for VAT purposes, unless it is a "single purpose voucher" (SPV) that can only be redeemed for goods or services of one type, subject to a single rate of VAT. In all other cases, this means VAT is only due from the retailer when the voucher is redeemed for goods or services at the checkout.

When a retailer sells a voucher (which is not a SPV) to a VAT registered intermediary, it is required to issue an invoice to the intermediary which shows the nominal amount of VAT which it will ultimately account for when it redeems the voucher.

Any subsequent sale of a voucher is treated as a supply of services for VAT purposes. So where an intermediary resells a voucher (and where the voucher is redeemable for taxable supplies), it must charge VAT.

Until recently, HMRC has taken the view that where a business buys retailer vouchers from intermediaries and subsequently gives them away free of charge, eg to an employee or to a customer, VAT then becomes due, on the basis that the voucher has been put to a private use by the recipient.

The Associated Newspapers case

In a case brought by Associated Newspapers (publishers of the Daily Mail), the Court of Appeal upheld earlier decisions of the Tribunals that no such output VAT charge arises where a business uses the vouchers in the course of its business, eg as part of a customer incentive scheme to drive sales.

The Court also confirmed that there was a right to recover input VAT on the purchase of vouchers from an intermediary because the input VAT could be attributed to Associated Newspapers' general publishing business. However, because the sale of the vouchers by a retailer is not a supply for VAT purposes, a business buying the vouchers directly from the retailer has no right to deduct input VAT.

The Supreme Court recently refused leave for a further appeal, so the Court of Appeal's decision is now final.

Do I have a claim?

If you have previously accounted for output VAT on vouchers which you have given away free of charge to your customers as part of a business promotion scheme, or to staff as part of an incentive programme, you may be entitled to make a claim for

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recovery of the VAT over paid. Similarly, if you have not recovered the VAT charged to you on the purchase of retailer vouchers from intermediaries, you may also be entitled to make a claim.

HMRC has yet to make a formal statement conceding that its policy is incorrect. Nonetheless, the four year time limit for making claims means you should be seeking to establish if you have a valid claim and at the earliest opportunity. As part of this, it will be necessary to provide evidence that the purchase of the vouchers was for the purpose of generating taxable business revenues.

Your next steps

For help and advice on this issue, including advice on how to make a claim, please contact your usual BDO adviser or the BDO VAT specialists listed overleaf.



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