HMRC - VATSC23400 - Samples

The rules applying to VAT on samples are contained in paragraph 5(2) – 5(4) of Schedule 4 to the VAT Act 1994.

Where businesses provide samples of their products free of charge to individuals for marketing purposes, they are not liable to VAT.

Both EU and UK legislation require that, when goods on which input tax has been reclaimed are disposed of for no consideration, VAT normally becomes due. However, this does not apply to ‘gifts of small value’ and ‘samples’, which in the UK under the VAT Act 1994 are defined as follows:

a limit of £50 - valued at cost - is applied to ‘small gifts’. This applies to either a single gift

or a cumulative series of gifts, to the same person in a 12 month period

only one sample of each product supplied to another person is to be disregarded

Gifts of small value

In the case of EMI (C-581/08) the CJEU agreed that the UK does have the right to apply the £50 limit to ‘gifts of small value’ and is entitled to set a cumulative limit.

It also stated that, where ‘gifts of small value’ are specifically given by a VAT registered business to different individuals, who have the same employer, those gifts should not be treated as provided to one taxable person.

Samples

The CJEU disagreed with UK policy and law concerning VAT and samples. It stated that the UK’s blanket restriction of relief to the first sample given away was not compatible with the EU Principal VAT Directive. It also stated that the criteria should not be restricted to samples given to existing, or potential customers, and may cover supplies to other parties who have an ability to influence future sales of that product (for example, through scientific testing/analysis, marketing activity, or via media reviews etc).

However, the CJEU accepted that the rules on samples need to be construed narrowly, and defined them as follows:

Definition of a sample

CJEU defined a sample as ‘a specimen of a product which is intended to promote the sales of that product and which allows the characteristics and qualities of that product to be assessed without resulting in final consumption, other than where final consumption is inherent in such promotional transactions’. We apply this definition.

Examples that would not qualify as samples

An example of an item that would not qualify as a sample is a finished item taken from a discontinued line. Although intended to demonstrate the type and standard of a particular range, it could not promote sales of that product line since it was no longer available.

Another example would be a product provided in quantities greater than necessary for its characteristics and qualities to be assessed. If a waiter in a restaurant pours a small glass of wine as a ‘taster’, this would qualify as a sample, but if the restaurant provides a regular customer with a bottle of wine, this would not meet the ‘samples’ criteria.

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