

HM Revenue & Customs Brief 19/10

VAT: postal services - claims for input tax

Introduction

Following the European Court of Justice's (ECJ) decision in the case of TNT Post UK Ltd (see Revenue & Customs Brief 64/09), a number of businesses submitted claims (including 'Fleming' claims) for a refund of VAT incurred on postal services purchased from Royal Mail. These have been held in abeyance by HM Revenue & Customs (HMRC) pending discussions about the impact of the decision. These discussions have now been concluded and, as announced in Budget Note 48, certain services previously treated as exempt from VAT will become liable to VAT at the standard rate with effect from 31 January 2011. This brief is to advise that HMRC will now begin considering these claims and the criteria which will be applied.

Background

In essence, the ECJ confirmed that Royal Mail, as the operator providing the public postal service, is the only postal body in the UK eligible to exempt postal services from VAT. However, it further ruled that exemption applies to the public postal services (that is, Royal Mail), acting as such and does not apply to supplies where the terms have been individually negotiated. Accordingly, UK VAT law is being amended to bring it in line with the ECJ decision. The government intends to make the necessary legislative changes in a second Finance Bill 2010 to be introduced as soon as possible in the next parliament.

Services affected

In broad terms, the proposed changes will mean that any service which is individually negotiated or not subject to any price and regulatory control will become liable to VAT at the standard rate. This includes, but is not limited to:

- all individually negotiated services
- Parcelforce services
- door-to-door (unaddressed mail)
- mailroom services.

Services which Royal Mail is obligated to provide under, or pursuant to, the terms of its licence - and which are therefore subject to price and regulatory control - will remain exempt from VAT (subject to there being no individual negotiation). This means:

- services covered by Royal Mail's Universal Service Obligation (including stamped mail)
- regulated services
- access to its network for private postal operators.

Detailed guidance on this can be found in HMRC's Technical Note issued on Budget day.

Handling of claims

To be valid, a claim must have included the information required, as set out in Notice 700/45: How to correct VAT errors and make adjustments or claims. Claims that do not meet these basic criteria will be rejected. Where a valid claim has been submitted, HMRC will consider:

- the contractual arrangements between the claimant and Royal Mail over the period of the claim
- (in relation to 'Fleming' claims only) developments in the postal market and related legislation over the period of the claim
- whether the supplies to which the claim relates would have been taxable at the standard rate under the new rules
- evidence that input tax has been incurred.

Unless they were made under the transitional provisions in section 121(2) of the Finance Act 2008 (Fleming claims), all claims will be subject to the four-year time limit in regulation 29(1A) of the VAT Regulations 1995.

Further information

For further information please contact the HMRC Helpline on 0845 010 9000.
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For further information

If you would like any further information, on the contents of this briefing or on any other VAT related issues, please contact:

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