



VAT:

Challenging HMRC

VAT DISPUTES, APPEALS AND LITIGATION

One of the most difficult matters for many VAT consultants – even those with years of experience – is to formally and successfully challenge HMRC's view of matters.

Experience has shown that HMRC perceive their 'policy' to be determinative with regards to VAT and will actively discourage any challenge to it.

Nonetheless, our experience is that in many areas, where their 'policy' may be accepted by others as being the status quo and as correct and indeed the only way of considering matters, when in fact it is inconsistent with the law.

Rarely is HMRC's 'policy' more beneficial to taxpayers than that provided by the law, the result would be, by not challenging HMRC, that taxpayers lose out.

WHO ARE WE?

VATangles is a specialist VAT consultancy with a long experience in challenges to HMRC. We do this through the appeals process, both within HMRC and externally, or by using the Alternative Dispute Resolution (ADR) procedures.

Over the years we have had fundamental success before all levels of the Tax Tribunals, the Court of Appeal and even the Court of Justice of the European Union (CJEU).

The bedrock of our work is knowledge of the impact of case law from the various levels of Tribunals and domestic courts as well as the CJEU. Even in a post-Brexit world it is common that we are discussing the latest European judgment in respect of, say, a Bulgarian VAT case. It is not only knowledge of VAT case law that can prove of use. We often use case law in other matters to the benefit of taxpayers.

VATangles is led by Noel Tyler – a VAT consultant of over 30-years-experience. As well as being a former VAT partner with a 'Top-20' firm of accountants, Noel previously worked within HM Customs and Excise's Solicitor's Office – so he has experience from the other side as well!



Noel Tyler,
Chairman



James Hurst,
Technical Director



Andy Belcher,
Senior VAT Consultant



Michael Lowe,
VAT Analyst



Katherine Cox,
Managing Director

WHAT ARE WE OFFERING YOU?

VATangles is offering the accountancy and tax practitioner community their specialist expertise in these matters, working alongside your team, where challenges to HMRC may be necessary, advisable or possible.

This provides access for your firm to our specialist skills, whilst retaining your own client relations. We can become a part of your team for the purposes of the matters in hand, without looking to take your client.





WHERE WE MAY BE OF ASSISTANCE

TAX PLANNING

Sometimes it may be perceived that HMRC's interpretation of the law either runs entirely contrary to the wording of the statute, or alternatively does not take into account alternative interpretations suggested or demanded by case law.

This may end up with a direct contest between HMRC's 'policy' and the law. The Commissioners will always, in our experience, fight hard to protect the former, even where it is inconsistent with the law.

ASSESSMENTS

When this was looked at about a decade ago, it was found that almost 45% of assessments issued by HMRC were incorrect in at least one material particular. Sometimes these errors would be fatal to the assessment. We have seen no reason to suggest that HMRC's accuracy has improved in any meaningful way.

Yet if such assessments go unchallenged, they become payable and the taxpayers will lose out. Rarely, in our experience, do such assessments under-state a taxpayer's liability.

There is also an increasing occurrence of HMRC seeking to raise assessments outside the time-limits as set out in the legislation. Again, such a practice will always need to be challenged.

PENALTIES

Outside of specific matters such as late registration, incorrect invoices etc., the current penalty regime was introduced to counter mistakes that HMRC would not have been necessarily expected to have found, and which were made carelessly or deliberately, but which did not provide 'a reasonably arguable view of the situation'.

What they were not introduced to do was to counter genuine challenges to HMRC's 'policy', although officers will look to issue them in such cases.

In the 2021 report Evaluation of HMRC's implementation of powers, obligations and safeguards implemented since 2012, the draftsman reported:

'Several external contributors felt that HMRC's approach to penalties could be heavy-handed in some cases...HMRC are sometimes seen to use penalties too aggressively... to discourage taxpayers from challenging HMRC's views'.

Yet nothing has changed. It appears that HMRC are content to be aggressive with penalties. Consideration should always be given to challenging them.

THE APPEALS PROCESS

The first step in challenging any decision, assessment or penalty issued by HMRC is to make a fully-argued case to the issuing officer as to why the document concerned is incorrect. Just occasionally they will change their mind, although in our experience this does not happen too regularly.

The more likely outcome is a 'decision letter', upholding the previous decision, and giving time limits for any further challenge – either a Statutory Review within HMRC or a direct appeal to the First-tier Tribunal.

The Statutory Review is a second-look within HMRC. Although the process should only be to see whether or not the document in question is consistent with the law, reviewing officers have told us that they are not entitled to find against HMRC's 'policy'. It is of limited use, but just occasionally will provide a solution.

Either directly from the decision letter, or after the Statutory Review upholds HMRC's document, the next stage is to appeal to the Tribunal.

The first-tier Tribunal is the first stage of the statutory process. It determines the facts of the case, and makes a decision as to the law. This decision is not binding on any other Tribunal.

Thereafter, an appeal can be made to the Upper Tribunal. This is the equivalent of the High Court. The decision of the Upper Tribunal is binding on all First-tier Tribunal cases. Further appeals may be possible to the Court of Appeal or even the Supreme Court.



CONTACT US

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WHAT WE CAN DO FOR YOU

LITIGATION

It is possible for taxpayers to be represented otherwise than by Counsel in the first-tier Tribunal and even in the Upper Tribunal – although this is less usual. We appear regularly in the Tax Tribunals.

However, increasingly in these Tribunals, and compulsorily in the Court of Appeal and Supreme Court, taxpayers are represented by members of the specialist tax bar, albeit that they are briefed by VAT consultants.

We at VATangles work regularly with barristers of all seniorities – from the most junior to the top QCs working in the field. It is unusual that a working day goes by without some kind of communication with barristers.

Our briefs are known for being full, and with compete legal arguments. This ultimately proves to be less costly to the Appellants. We have the respect of Counsel and their clerks at all levels.

ADR

Another option, in certain circumstances, is to use ADR. In this case, an HMRC trained mediator will liaise between your client and the case officer to endeavour to find a solution to the dispute.

There are occasions where such an approach may be appropriate. However, as it is currently set up (and this may change) it is still HMRC looking to mediate disputes between taxpayers and one of their own!

However, should the matter be suitable for ADR, we will represent the taxpayer in the discussions, and will ensure that the optimum case is presented to the mediator for his or her consideration.

Undertaking ADR does not preclude your client at any time from appealing to the Tax Tribunal.

WE CAN:

- ◆ Advise on the likelihood of success for any challenge to HMRC.
- ◆ Work with you to determine the best route for the challenge.
- ◆ Draft initial documentation optimising the challenge to the issuing officer.
- ◆ Prepare documentation for appeals to the Tax Tribunals.
- ◆ Brief Counsel for appearance in Tax Tribunals; or represent the taxpayer before the Tribunal.
- ◆ Consider any further ongoing appeals, either by the taxpayer or by HMRC.

OUR FEES

Our fees for such work are on an hourly-rate basis. They are similar to the rates charged by similar staff within 'top-50' firms of accountants. In addition, any expenditure necessarily incurred, including but not limited to Counsel's fees, will be re-charged at cost.



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