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PENALTY FOR INCORRECT ZERO-RATE CERTIFICATE

There is growing concern over a power that HMRC have to assess a charity or church for a penalty if they issue a zero-rating certificate improperly.

Typically, where a Charity or Church has a new building or new annexe to an existing building constructed, it can be zero rated. The recipient issues a formal zero-rating certificate to the building contractor(s). The building or annexe will be used for a 'relevant charitable purpose' or RCP.

Where zero-rating is denied, then VAT has to be charged at 20%. But s62 of the VAT Act 1994 also allows HMRC to assess a penalty on the issuer of the certificate. The building contractor would not normally be liable to a penalty in such circumstances.

The penalty may be up to the amount of VAT 'saved.' So, on a £1m building, the VAT cost becomes £400,000. You may think it penalty enough to have to find the VAT at 20%, without having to pay up to the same again!

A recent case involved *Greenisland Football Club*, a sports club in Ireland. HMRC denied zero rating on a new building costing around £1.3m. They also assessed the club for a penalty of £53,000 for incorrectly issuing a zero-rating certificate. (This was 20% of the VAT due.) Giving evidence at the Tax Tribunal the Club's Development Officer explained that he had researched the matter on the HMRC website, and asked the Club's Accountant and their (VAT?) Consultant. Verbal advice was received. The First Tier Tribunal asked whether what he had acted reasonably in seeking advice that he did. The Tribunal concluded that to consider material on the HMRC website and seek verbal assurance from two professionals was sufficient to constitute a 'reasonable excuse,' and have the penalty cancelled.

HMRC appealed the decision of the First Tier Tribunal. They might argue that this was to clarify the legal position. But it also raises a concern that they are being more

aggressive towards taxpayers in this circumstance. The Upper Tier Tribunal upheld the FTT decision on 'reasonable excuse,' so the penalty was cancelled.

One argument that HMRC raised at the Upper Tier that they had not raised earlier was the taxpayer should have sought advice from HMRC, apart from researching the matter on its website. The Upper Tier objected to them raising this issue. And the Upper Tier also insisted that what the taxpayer did was a reasonable thing to do.

Comment: this case confirms an important issue in relation to Charities and Churches. If you are entering into a construction project, you cannot assume it will be zero rated. You are strongly advised to seek external professional advice, as well as consider guidance on the HMRC website. We do advise that such advice be provided in writing.

We do not think it always necessary to ask HMRC for a ruling. Remember that HMRC is expected to raise revenue, so it will default to a position that denies zero rating, unless the facts are very strongly in your favour.

We work closely with Les Howard and Rebecca Porter at vatadvice.org and they will be delighted to advise any members as to their eligibility to zero rating.

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