

VAT, online sales and vouchers

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Online transactions

- Nature of the supply
 - Provision of website
 - Search function
 - What the customer actually has to pay for
- *Findmypast v. HMRC* [2017] CSIH 59
 - Genealogical documents
 - Search function
 - Charging structures

Issues

- What is the supply?
 - Online documents
 - Agglomeration of services
- Are payments for credits prepayments?
 - VAT point then or only when documents viewed
 - Supply sufficiently precise?
- Are credits face-value vouchers?
 - Present law
 - Consideration ignored

Supply

- General principles
- Identify the supply
- What you have to pay for vs. what you can get for free
- Importance of contract in identifying content v. characterising that content
- Customer's point of view

Prepayments

- Importance
 - Articles 63 and 65 of Directive 2006/112
 - Section 6 VATA94
- What is relevant
- What is not relevant
 - Tax avoidance: Case C-419/02 *BUPA Hospitals Limited v. Commissioners of Customs and Excise* [2006] ECR I-1685
 - Fraud: Case C-107/13 *Firin v. Direktor na Direktsia* [2014] S.T.C. 1581

Prepayments (2)

- Depends on nature of supply
- If supply is website generally
- If supply is individual documents

Vouchers

- Intermediate stage between payment and ‘actual’ supply
- VAT not a tax on payments, but on supplies of goods or services
- Two possibilities
 - Acquire rights, distinct from money that has been paid
 - Hand over money pending use

Vouchers (2)

- No EU law
- UK law – Sch 10A VATA 94
 - Physical or electronic form
 - Representing a right to acquire goods or services
 - Up to an amount
 - Recorded on or in the voucher

Findmypast

- FTT vs. UT vs. Court of Session
- Court of Session
 - Not vouchers
 - Vouchers are acquired for their own sake
 - Credits in case do not represent a right, but merely entries in an account between supplier and recipient

Findmypast (2)

- Not vouchers
 - Amount variable?
 - Not recorded on or in it? But *Skyview Ballooning Limited v. HMRC* [2014] UKFTT 32 (TC).

Brexit issues

- What will happen if / when Brexit takes place?
- Possible issues: