

VAT NEWS

Issue 1 2019



Oh, Mr Portal what should I do?

Most businesses will have to comply with the making tax digital (MTD) requirements from 1 April 2019.

One of the issues has been about the existing portal currently used for making online VAT submissions.

The implication is that once a business has notified HMRC that they are required to use MTD then the existing portal will be closed to them, so submission can only be done through the new MTD portal using MTD compliant accounting software or an MTD compliant piece of bridging software.

A common question is what penalties can HMRC impose if the MTD requirements are not followed?

The basis for most VAT penalties issued by HMRC are found in Schedule 24 of the 2007 Finance Act and are a percentage of potential lost revenue ("PLR"). If a business continues to submit its (correct) VAT returns on time and pay the amounts due before the relevant deadline there's no penalty under Sch. 24. However, there are less common penalties lurking within the VAT legislation.

The most apt appear in section 62 of the 1994 VAT Act and regulation 25A of the 1995 VAT regulations.

Section 62 contains penalties for "Failure to comply with certain regulatory requirements" with a minimum penalty of £50, but maximum based on daily rates of £5 to £15 a day for up to 100 days; and penalties for failing to comply with a requirement to preserve records as required (£500 penalty).

Regulation 25A refers to the requirement to make electronic submissions "that the person is required or authorised to use" with a penalty of up to £400 for failure to do so.

These penalties are not common or automatic. Although there's the 12 month "soft landing" for MTD, if a business wilfully breaks MTD requirements there'd be no surprise to see such penalties being imposed.



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In principal an agent?

The taxpayer operates websites where students can commission course work, essays, dissertations, etc. The student specifies the topic, length of the piece and even grade required. The taxpayer then farms out the writing to one of over 400 academics, teachers or students to write the piece.

The taxpayer argued that they were an agent introducing the writer to the student so the VAT was only due on their commission; HMRC said the taxpayer was a principal and VAT was due on the whole value. Due to the contracts that were in place and the fact that the student did not know who the writer was, the Tribunal ruled the taxpayer was a principal so VAT was due from them on the whole value of the supply. The Tribunal also had some choice comments about the morality of the business.

This shows the risks regarding businesses treating themselves as agents for VAT purposes.

Let them eat raw chocolate brownies

A business produced bars using fruits, nuts, grains, etc. as unprocessed and "natural" as possible. They applied for a repayment of overpaid VAT on what they believed to be zero-rated cakes. HMRC disagreed and said that the product was standard rated confectionary. The Tribunal (after testing several other products deemed to be similar) ruled that the product was a cake. Perhaps more importantly, it also said that the current legislation for the taxing of food was no longer fit for purpose.

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