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Jon Riley
PA to Ian Stewart
Deputy Director, CT&VAT
HM Revenue & Customs
100 Parliament Street
London SW1A 2BQ



Chartered
Institute of
Taxation
Excellence in Taxation

via e-mail: jonathan.riley@hmrc.gsi.gov.uk

Dear Jon

Notice 733 – Bank interest wrongfully included in FRS turnover

Our attention has been drawn to paragraph 6.2 of the latest version of Notice 733 issued in January 2011. This reads:

- '6.2 What must I include in my flat rate turnover?
Your flat rate turnover is all the supplies your business makes, including VAT.
This means all of the following:
- the VAT inclusive sales and takings for standard rate, zero rate and reduced rate supplies
 - the value of exempt income, such as any rent, bank interest on a business account or lottery commission'

(emphasis added)

It has been suggested to us, and we agree, that the second bullet point may be misleading following the decision of the First Tier Tribunal in the cases of *Fanfield Ltd* *Thexton Training Ltd v Revenue & Customs* [2011] UKFTT 42 (TC) (11 January 2011).

In those cases, the Tribunal concluded that bank interest earned by the two companies was outside the scope of VAT and accordingly should not be included in relevant turnover for the purposes of calculating the VAT due by the companies under the Flat Rate Scheme.

We agree with the comment of the Tribunal in para 22 that –

' ... But the supply made when a person places money with another for a period of time in return for interest is a prime example of the type of supply that is, depending on the circumstances, capable of falling on either side of the line.... [ie may or may not be a supply]'

We consider that the inclusion of the term 'bank interest on a business account' is likely to be misleading to many small businesses. Indeed, it is our view that there will be very few situations in which bank interest is consideration for a supply and therefore needs to be included in relevant turnover. Indeed most of the situations in

ARTILLERY HOUSE
11-19 ARTILLERY ROW
LONDON SW1P 1RT

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)844 251 0830
Fax: +44 (0)844 579 6701
E-mail: technical@tax.org.uk
Web: www.tax.org.uk



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which bank interest is a supply will be found in larger businesses such as those in the financial sector.

We would therefore suggest that:

- Notice 733 needs to be amended to reflect the decision of the Tribunal; and
- in the meantime, taxable persons who are on the Flat Rate Scheme should be advised that if they have included bank interest in their relevant turnover within the last four years, they may be entitled to recover the VAT overpaid as a result by lodging a claim under VATA 1994, s.80.

Yours sincerely

Douglas Gordon
Chairman, VAT Sub-Committee

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