



Taxing Matters

Navigating the complexities of the tax world

RPC

Season 4

Episode 5 – A very VATy Christmas with Philip Simpson KC from Old Square Tax Chambers

Alexis:	<p>Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alexis Armitage and I'm a Senior Associate in RPC's Tax Disputes team. I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some extra bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at www.rpclegal.com/taxingmatters.</p> <p>Welcome everyone. So it's the most taxable time of the year and welcome back to Taxing Matters, the podcast where the only thing more complicated than your in-laws is VAT. Now every December we like to unwind with something festive and frankly ridiculous. And what better way to celebrate than by reviewing your Christmas dinner, not for taste, but for taxability. Joining me today is Philip Simpson KC from Old Square Tax Chambers, who is something of a VAT expert and also a stand-up comedian in his spare time. No pressure, Philip. Thank you so much for joining me today.</p>
Philip:	<p>Thanks, it's a pleasure to be here Alexis.</p>
Alexis:	<p>So, we're going to start with a now iconic VAT battle involving an M&S strawberry and cream sandwich. And then we'll go on to a full festive food VAT-athon. Because nothing says holiday cheer like an argument over the VAT status of a pre-roasted spud. So here we go. Let's talk about the M&S strawberry and cream sandwich. Why did this cause such a tax row Philip?</p>
Philip:	<p>Yes, well, it's usual confectionery against cakes issue, the sandwich that sparked national outrage, or least some very serious eyebrow raising in the tax community. A soft sandwich, white bread, obviously, filled with strawberries, cream and jam. My clerks were so excited when the decision came out that they went and bought some for the whole of Chambers. Marks and Spencer's claimed it was a sandwich and thus zero rated for VAT. HMRC said, no, no, no, that's not a sandwich. That's a dessert with a structural ambition.</p> <p>They argued it was essentially confectionary, possibly even cake adjacent, maybe a sophisticated bread and butter pudding. Mary Berry might have approved, but HMRC certainly didn't.</p>
Alexis:	<p>And so the tribunal ruled in M&S's favour?</p>
Philip:	<p>They did indeed. Despite the presence of jam, cream and strawberries, the item still fit the legal definition of a sandwich. Two slices of bread with a filling, and crucially sold in the same aisle as egg mayo and ham and cheese. If it looks like a sandwich, walks like a sandwich and sits next to a sandwich, then who am I to judge? Goodness.</p>
Alexis:	<p>So, strawberries and cream are now protected by law as sandwich worthy?</p>
Philip:	<p>Part of the great British sandwich tradition. The Earl would have been proud, along with tuna mayo, coronation chicken and mild disappointment. It opens the door to all kinds of creative fillings. I'm personally going to petition for tiramisu panini to be zero rated by Hogmanay.</p>
Alexis:	<p>So, let's move on to the main event then. It's Christmas Day, the table's set, the Christmas music's on, you survive three hours of monopoly with the family. So, let's go around the plate and ask the big question, VAT it or not? So what about the turkey?</p>
Philip:	<p>Well, first of course, Alexis, this is my favourite board game to play on Christmas Day. Raw turkey, zero rated. Under VAT law, raw meat is a necessity. That's the underlying policy from which all these zero-rating distinctions came to be</p>

made in the 1970s. It makes sense. Who doesn't need a six kilogram bird in their fridge in mid-December? But if you buy a hot, pre-cooked or even carved by someone in a little hat, then that's catering, and you pay VAT. Unless of course it's a slice between two slices of white bread, then it's a sandwich and we're all good.

Alexis: And so what about pigs in blankets?

Philip: Pigs in blankets, my favourite. Zero rated if you buy them raw. But again, hot, very cheap from a supermarket deli counter. And wham bam, standard rated. Because nothing's as luxury like sausage wrapped in bacon. Unless of course it's between two slices of white bread. And we're back to being a sandwich.

Alexis: Indeed. And what about stuffing?

Philip: Get stuffed is a line often I have when I'm thinking of tax matters. It depends on the form. Buy it as a dry mix and its zero rated, you are safe. But if you buy a pre-made artisan stuffing, the sort I get in cobbled streets in Stockbridge in Edinburgh, especially from a deli counter or a posh farm shop, you're looking at 20% VAT. If there are pine nuts involved, HMRC assumes you're doing too well in life.

Alexis: And what about the roast potatoes?

Philip: Oh come on Alexis, you must know by now they're zero rated. Buy them pre-roasted and hot though on a foil tray from a takeaway, 20%. The second they're golden crispy they become a taxable luxury. So rather than cooking yourself you enjoy your 20 % surcharge on convenience.

Alexis: And what about pretty much the least favourite thing, Brussels sprouts?

Philip: I don't care, not on my plate, thank you. But zero rated, even if they come in a fancy knit bag, because nothing about them suggests enjoyment or indulgence. If you eat them voluntarily, HMRC assumes you've suffered enough, my goodness. Certainly when my mother makes them.

Alexis: And what about cranberry sauce?

Philip: Standard rated obviously, but again put it between bread with some brie and you're fine.

Alexis: And moving on to desserts then, what about Christmas pud?

Philip: Well, Christmas pudding what else for a mix of dry fruit, booze and a hidden coin. Definitely standard rated, what's not to tax. If you can set it on fire at the table, it's basically a flaming symbol of fiscal indulgence.

Alexis: And what about mince pies?

Philip: Ah, the great British VAT enigma. Cold in the box from the supermarket, zero rated. But again, hot from a cafe or bakery, you're on the hook for VAT. So always let your mince pies cool. That's the official advice. Or risk the wrath of HMRC and your bank manager.

Alexis: Moving on to the cheese board then, what about the cheese?

Philip: Cheese, zero rated, thankfully. Even my favourite, Stilton. But crackers and chutney, standard rate, I'm afraid. Cheese is essential, but put them on a cracker and you're a decadent individual deserving to be slammed with VAT.

Alexis: What about the mulled wine or the Baileys?

Philip: Well, you are just asking for VAT trouble there. And of course, if I can put in a wee mention for excise duty as well, let's not forget that one.

Alexis: And what about, so what about champagne and booze? Obviously that all comes onto the same thing, does it?

Philip: Yes, for the mulled the wine I suppose even if it's lukewarm and served in a paper cup at a school fair though of course there are now complications with that. Because if it's a school fair, well if the school is putting it on then you might well be below the VAT registration threshold unless you're a private school in which you're definitely not anymore. But if it's the parent association, well no way they're registered for VAT, so VAT free. How about that?

Alexis: And what about Christmas crackers?

Philip:	Christmas crackers, standard rated, definitely VATable. You've got to pay for those jokes. They're not food of course, unless you're really confused at end of a heavy Christmas dinner. Nothing says essential item, but novelty moustache comb and a riddle about hedgehogs.
Alexis:	And what about scented candles? They're always a favourite at Christmas, aren't they?
Philip:	Yes, yes.
Philip:	The breath of central candle pine forest cinnamon spice or regret in December. Definitely VATable. HMRC is very clear that "goods for olfactory indulgence are not essential, which is rich, given how essential they are to masking burnt sprouts and family attentions. So if your house smells like Christmas, it's going to cost you.
Alexis:	And what about Christmas jumpers and socks?
Philip:	Well, clothing, so standard rated unless designed for children. So if a grown adult is wanting to wear a Christmas jumper, to be honest, they deserve all the VAT that they have to pay. But children have an excuse and can get away with that sort of thing for a while until they're 14. So yes, no VAT for them.
Alexis:	And what about things like wrapping paper and Christmas cards?
Philip:	It's VAT, VAT, VAT. Bad jokes, glitter blasts till June. Definitely taxed. Anything that adds to the joy of gift giving is just asking for a value added tax on it.
Alexis:	And so now we're going move on to the quick fire round, VAT it or not. So I'm gonna say these things quickly and then just give me your take. What about a gingerbread house?
Philip:	That must be VAT. You might not be taxing your actual house, but a biscuit one, you're asking for trouble.
Alexis:	What about a box of quality street?
Philip:	Well, it's chocolate, Alexis, HMRC, want their bite of that.
Alexis:	And what about a hot sausage roll from the bakery?
Philip:	Whether it's a meat one or a Gregg's Vegan one, you've got to eat it cold to avoid tax, otherwise you're paying VAT. So eat it cold and avoid the joy.
Alexis:	And what about raw parsnips?
Philip:	Dull and rooty. Definitely no tax on those.
Alexis:	Pavlova?
Philip:	Sugary and pretentious, HMRC's favourite combination.
Alexis:	What about prawn cocktail if it's pre-made?
Philip:	If you're going to combine shellfish with a Marie Rose sauce, you are going to pay VAT on that, I'm afraid.
Alexis:	Amazing. So what have we learned? If it's hot, sweet or remotely enjoyable, it's probably VATable. If it's raw, sad or made from cabbage, you're in the clear. Merry Christmas to all our listeners. May your turkey be tender, your VAT returns be error free and your mince pies be cold enough to avoid taxation. Thanks to our wonderful guest, Philip, for joining us for this absurd sleigh ride through VAT law. Until next year, stay compliant, stay festive and for goodness sake, don't microwave your mince pie. Merry Christmas, everyone.
Philip:	Merry Christmas and thanks very much for having me Alexis.

Alexis

As ever, a big thank you goes to RPC's in-house team for the production, music and sound editing of this episode.

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