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Indirect tax update

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Summary

Welcome to this week's Indirect Tax Update.

It seems only like yesterday since the Government announced that businesses in the UK would be able to defer VAT payments due to the first national lockdown caused by the global coronavirus pandemic. Rishi Sunak announced in March 2020 that all businesses would be able to defer any VAT due to HMRC in the period from 20 March 2020 to 30 June 2020 until March 2021.

Shift the clock forward by 10 months and UK businesses must now start to prepare for these repayments. Many businesses have already begun to make repayments but many have not. The original plan was for any VAT deferred to be repaid in full by 31 March 2021. However, as the global pandemic has continued to cause major disruption to the UK economy, HMRC has announced that businesses may opt to pay any arrears in equal instalments by the end of March 2022. Businesses will be able to opt in to this further deferral scheme shortly.

HMRC has also announced this week how businesses should correct any errors on VAT returns covered by the deferral period.

We also look this week at a First-tier Tribunal decision in the case of Healthspan. The question to be answered in this case was whether supplies to UK consumers should properly be regarded as 'distance sales' and liable to UK VAT. Following earlier precedent in the case of KrakVet, the Tribunal has ruled that, even though the goods in question were 'delivered' by a separate entity to the supplier, the supplies still qualified as 'distance sales'.

Finally, HMRC has announced that motor dealers in Northern Ireland will be entitled to use the second hand margin scheme in relation to any cars purchased in Great Britain and sold in Northern Ireland. Ordinarily, the second hand margin scheme cannot be used for vehicles purchased in a different fiscal jurisdiction.

Coronavirus Pandemic – VAT deferment

Businesses need to prepare for repayment of any VAT deferred

When the Government announced the first national lockdown in March 2020 due to the burgeoning impact of the global pandemic, it's fair to say that nobody envisaged that, 10 months on, the country would still be reeling from the effect of the virus and in the centre of the third such lockdown. At a stroke, many businesses were forced to close (especially those in the tourism and hospitality sectors) or to scale down operations. The Government – recognising the enormity of the economic impact – announced that it would help businesses affected by the impact of the virus and this was done in a number of ways.

From a VAT perspective, the Government announced that it would help businesses by allowing for any VAT payments due to HMRC between 20 March 2020 and 30 June 2020 to be deferred until 31 March 2021. At the time of writing, we are now only six weeks away from that repayment deadline and businesses need to start to prepare for making repayments. Alternatively, (again recognising the impact that the pandemic has had on the economy), HMRC has announced that if businesses wish to defer repayment of the deferred VAT further, they will be able to opt in to a new repayment scheme early in 2021. We still await exact details of the new 'opt in' arrangements but, in essence, businesses will be entitled to opt in to the scheme and agree to pay any deferred VAT in any number of equal instalments (ranging from two to eleven) provided that all of the deferred arrears are settled by 31 March 2022. Businesses wishing to take advantage of this new arrangement should keep an eye out for details of how to opt in. We will provide further detail in a future edition of this Indirect Tax Update.

The new arrangement will allow businesses to settle their deferred VAT arrears on an interest free basis. However, there are certain conditions for businesses to meet in order to qualify for further deferral: the business must still have a balance of deferred VAT to pay from the deferment period; it must be up to date with all of its VAT returns; the business must opt into the new arrangement by 31 March 2021 and the business must pay its first instalment at the time of opting in. Businesses that have not already done so will also need to have a Government Gateway Account.

HMRC has also announced this week how businesses should correct any VAT accounting errors that they discover for periods covered by the original VAT deferment. (i.e. February, March, April and May 2020). In essence HMRC requires business to report such errors on form VAT 652. Once HMRC has acknowledged the error and issued a statement of account the business will be entitled to defer payment until 31 March 2021 or include the amount in in its arrears calculation when opting into the new deferment arrangement. Where HMRC has issued any assessment for periods covered by the original deferment scheme, businesses may also include any VAT due in the new deferral arrangements.

Whether any additional VAT payments are due to the correction of errors or due to the issue of assessments by HMRC, businesses must contact the HMRC COVID -19 helpline by 29 January 2021 if they wish to include these 'extra' payments in the new deferral arrangements. HMRC has made it clear in its guidance that businesses will NOT be able to include extra payments after they have opted in to the new deferral arrangements. Any business that finds itself in a situation where it is unable to make VAT payments to HMRC as a result of the ongoing impact of the pandemic or they need more time should seek HMRC's support.

Comment – Given that the pandemic has got increasingly worse over the last 10 months and we again find ourselves in another national lockdown, one would have thought that the Government would have extended the deferment arrangement to cover more VAT periods from May 2020. That said, HMRC's announcement of the helpful 'opt in scheme' should not go unacknowledged. Businesses affected by the pandemic should assess their financial position and either make arrangement to pay the deferred VAT by 31 March 2021 or opt in to the new deferral scheme as soon as possible.

First-tier Tax Tribunal – Healthspan Ltd v HMRC

Distance selling of goods to UK consumers

The First-tier Tax Tribunal has issued an interesting decision in the case of Healthspan Ltd v HMRC. Essentially, the case concerned whether supplies of goods by a business established in Guernsey (Channel Islands) to consumers in the UK were liable to UK VAT under the distance selling rules. Under the arrangements in question, customers could order goods either by post or over the internet. The goods were physically located in the Netherlands and were despatched to the UK by a third party (PostDirect).

The distance selling rules (at the time of the supplies in question) were invoked in the UK if a business established outside the UK supplied goods to consumers and arranged for the goods to be transported to the customer. In this case, Healthspan sought to disapply these rules by arranging for the customer to choose to arrange transport of the goods themselves or to use PostDirect. Healthspan argued that, in such circumstances, it did not, therefore 'arrange' the transport and, as such, the supply of goods did not fall within the distance selling rules.

HMRC took issue with that argument and Healthspan appealed to the Tribunal. Originally, the Tribunal decided to refer the matter to the Court of Justice but, in the interim, the Court delivered its judgment in the case of KrakVet (a case with similar facts). In the end the Tribunal decided that it no longer needed the assistance of the CJEU and issued its decision. The Tribunal has confirmed that, in its view, Healthspan played a predominant role in the ultimate delivery of the goods to the consumer as it initiated and organised the transport of the goods. Moreover, the choice of the customer was somewhat illusory as postage direct to customers by PostDirect was the only realistic option offered. Further, the Tribunal considered the fact that Healthspan referred to PostDirect as "its own delivery company" was significant.

In the circumstances, the UK's distance selling rules were appropriate and UK VAT was due. Healthspan's appeal was dismissed.

Comment

To a degree, this decision of the Tribunal has only historic significance since the distance selling rules are no longer relevant in the UK since Brexit.

The arrangement – of attempting to separate supply and delivery of goods to consumers – has been tried in a number of cases culminating in the judgment of the Court of Justice in the case of KrakVet. (see our Case Alert).

The Court concluded that if the supplier has a significant involvement in the dispatch and transport of the goods, Art.33 of the VAT Directive will be applicable and the place of supply will be where consumption takes place, ie. where the customer belongs. The FTT considered that, in the circumstances, Healthspan in this case was, in reality, involved in the dispatch of the goods to consumers in the UK.

Brexit: Northern Ireland and Second Hand Motor Vehicles

HMRC announces that dealers will be entitled to use the margin scheme

Ordinarily, the second hand margin scheme for Motor Vehicles is not available for vehicles that are purchased in one fiscal jurisdiction and sold in a different jurisdiction. Accordingly, vehicles purchased in (say) France and sold in the UK could not be treated as margin scheme vehicles and VAT would be due on the full selling price of the vehicle rather than on the profit margin.

With Northern Ireland retaining a special status within the EU following Brexit, HMRC has announced this week that dealers in Northern Ireland who sell vehicles purchased in Great Britain (England Wales and Scotland), will still be entitled to use the margin scheme. This means that dealers will be entitled to account for VAT on the margin rather than on the full selling price.

Where a Northern Ireland dealer buys a second hand vehicle in GB and then, subsequently, transfers the vehicle to the dealership in Northern Ireland, the movement of the vehicle will be regarded for VAT purposes as a movement of own goods. VAT will be due on the full value of the vehicle but this VAT will also be reclaimable by the dealer as input tax provided that it is put into stock for resale.

HMRC has also announced that where dealers have already accounted for VAT on the full selling price (ie for vehicles sold post 1 January 2021), the vehicle will, in fact, be eligible under the margin scheme. As such, the value of the supply can be adjusted retrospectively provided that any additional VAT is refunded to the customer.

Comment

It will take some time for all of the curiosities of the Brexit Deal to reveal themselves in relation to trade between GB and NI.

Here, without a change of policy by HMRC, motor dealers in NI would have been disadvantaged by operation of the strict rule.

Even though GB and NI are part of the same country, the NI protocol agreed with the EU provides a different set of VAT rules in NI. Essentially, NI is treated as if it were still a member of the EU meaning that the movement of vehicles between GB and NI would not be eligible for the second hand margin scheme. Common sense seems to have prevailed and dealers can now use the scheme for vehicles purchased in GB and sold in NI.

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