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Indirect tax update

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Summary

Welcome to this week's Indirect Tax Update.

As far as case-law developments are concerned, this week has been very quiet. The Court of Appeal has issued a judgment in the appeals by L.I.F.E. Services Ltd and The Learning Centre (Romford) Ltd. These appeals concerned the same issues – (1) whether the entities were 'state-regulated institutions' for the purposes of the VAT Welfare Services exemption and (2) whether the different treatment of charities or the different treatment in Scotland and Northern Ireland of welfare services was a breach of the principle of fiscal neutrality.

The First-tier Tribunal had found in favour of both appellants but the Upper Tribunal reversed those decisions. The companies appealed to the Court of Appeal which delivered its judgment on 25 March 2020.

In other news, the Government has announced an unprecedented package of measures to support businesses during these unprecedented Covid-19 times. From an Indirect Tax perspective, the Government has announced a VAT payment deferral scheme.

Any UK business that has a VAT liability that is due to be paid during the period 20 March 2020 to 30 June 2020 can, without prior authorisation, defer that payment until the end of the current tax year (5th April 2021).

Businesses that pay HMRC by direct debit should ensure that they cancel the direct debit at their bank so that HMRC does not 'call' for the payment.

Businesses will also need to continue to complete and submit VAT returns in the normal way.

Finally, the UK's First-tier Tax Tribunal (FTT) has issued a General Direction staying all current cases for a period of 28 days. The General Direction also applies to any time limits that have been agreed or directed by the Tribunal for such things as service of documents and service of witness statements etc.

The stay does not apply, however, to new appeals. Businesses contemplating lodging an appeal with the Tribunal should do so in accordance with the existing statutory time limits.

Court of Appeal – L.I.F.E. Services Ltd & The Learning Centre (Romford) Ltd

Whether private welfare service providers were 'state-regulated institutions' and whether the principle of fiscal neutrality had been breached.

Both taxpayer companies (LIFE and TLC) in this case were private providers of day care services to vulnerable people. They argued that, as the services they provided were delivered under a contract with a Local Authority, they were 'state regulated' and that, as a consequence, their services should have been exempt from VAT. On the other hand, HMRC considered that they were not state-regulated and that the service should, therefore, be liable to VAT at the standard rate. Both companies also had an alternative argument if the Courts found that they were not state-regulated. They argued that the EU law principle of fiscal neutrality had been breached as the UK treats private providers differently to charities and treats the same supplies differently in Scotland and Northern Ireland.

UK VAT law provides an exemption for the supply of welfare services (and goods supplied in connection with such services) by charities, public bodies or 'state-regulated private welfare institutions or agencies. In this case, both LIFE and TLC provide welfare services (day care services to vulnerable individuals) under a contract with Local Authorities. They argued at the First-tier Tax Tribunal (FTT) that they were 'state-regulated' as they were both 'registered with' and, to some extent 'supervised' by the respective Local Authority. The FTT agreed and allowed the initial appeals. HMRC then appealed to the Upper Tribunal which took a different view and overturned the FTT decisions. The Upper Tribunal considered that, whilst the activities of both organisations were provided under contract to a Local Authority and that there was, as a result, clear oversight or supervision, that did not of itself mean that they were 'regulated' by the Local Authority. They were not 'state regulated institutions or agencies'. Both LIFE and TLC appealed to the Court of Appeal.

In its judgment of 25 March 2020, the Court of Appeal has confirmed the Upper Tribunal's view that they are not state regulated institutions. The Court of Appeal also considered the fiscal neutrality arguments put forward by the two companies. The principle of fiscal neutrality is an EU law principle which precludes a Member State from treating the same or similar supplies (of goods or services) differently for VAT purposes. In this case, the companies argued that the UK treated charities differently to private welfare service suppliers. However, the Court found that the VAT exemption for the supply of welfare services by a charity would only be exempt from VAT if the charity had the provision of such services as, or as part of, its stated objects. Accordingly, there was no difference of treatment and the principle of fiscal neutrality was not breached. The companies also argued that there was different treatment in Scotland and Northern Ireland to the treatment in England and Wales as, in Scotland and NI, the provision of private welfare services are state regulated.

The Court of Appeal also dismissed this line of argument. VAT law in the UK does not discriminate between private welfare providers located in different nations of the UK. It does discriminate between state-regulated providers and non-state-regulated providers, but that does not contravene or breach the principle of fiscal neutrality.

The Court of Appeal considered that the Upper Tribunal had reached the right conclusions for the right reasons and there was no error of law. The appeals were, therefore, dismissed.

Comment – the Court of Appeal has confirmed that as the Care Act 2014 neither requires nor empowers Local Authorities to register or approve welfare service providers such providers cannot be regarded as being 'state-regulated'. Similarly, the Court confirms that there had been no breach of the principle of fiscal neutrality between state-regulated providers. The only discrimination was between state-regulated and non-state-regulated providers. These are two very different types of provider. Private welfare service providers will need to take note of this judgment.

Unprecedented times brings unprecedented support

Government announces help for UK businesses as a result of Covid-19 Pandemic

The Government has announced that it is to provide extensive support to businesses in the face of the Covid-19 global pandemic. From an Indirect Tax perspective, this includes a payment holiday or deferral. Any business with a VAT liability falling due in the period from 20 March 2020 to 30 June 2020 (the deferral period) including any payments on account is automatically eligible to defer payment until 31 March 2021. There is no requirement for any business wishing to defer payments to notify HMRC in advance. However, for those businesses paying VAT by Direct Debit, HMRC has stated that the businesses should ensure that the Direct Debit is stopped at the bank to ensure that payment is not collected by default. HMRC has also confirmed that there will be no interest or penalties charged where payment of VAT is deferred.

Businesses should continue to charge and account for VAT during that period in the normal way. In particular, businesses should ensure that current VAT returns are submitted by the due dates. Businesses that are in a repayment or refund position will receive their refunds from HMRC in the normal way and HMRC has confirmed that, to ensure delays in paying refunds are kept to a minimum, they will apply a 'light touch' to any pre-repayment enquiries.

Any businesses that have sufficient funds to pay any VAT liabilities during the period are free to do so. As of 26 March 2020, HMRC has stated that it expects VAT to be paid in the normal way for any periods subsequent to the deferral period. We expect the surcharge default system to continue encouraging taxpayers to file VAT returns by the relevant filing deadlines. Surcharge liability notices may be issued where VAT returns have not been filed and have the potential to create surcharges being levied over the next 12 months. Should you find yourself in a situation where you cannot file due to Making Tax Digital or difficulties with the online portal we suggest speaking to HMRC on the VAT helpline as soon as possible.

Comment

There will be literally thousands of businesses throughout the UK that will be impacted heavily by the UK's 'lockdown' as a result of the global pandemic.

The Government has recognised that businesses will suffer extreme hardship and it is to be commended for its interventions to date.

Businesses that can do so, should pay the VAT liabilities as they fall due but any UK business (the measures do NOT apply to non-UK businesses that are UK VAT registered) is entitled to take advantage of the deferment arrangements. Businesses should also consider reviewing their trading models and accounting arrangements to ensure that, where possible, output VAT is deferred and input VAT claims are accelerated. Speak to your local Grant Thornton VAT advisor for further information and assistance.

For any business that finds itself in temporary financial distress, HMRC has said that such a business should contact them to discuss time to pay arrangements.

First-tier Tax Tribunal

Tribunal issues a general direction

As a result of the UK lockdown, the First-tier Tax Tribunal has issued a general direction as follows:

DIRECTIONS FOR A GENERAL STAY
I consider it appropriate to make the following Directions in the light of the Covid-19 pandemic and the effect that it is having on the conduct of proceedings in the Tax Chamber IT IS DIRECTED that
1.With immediate effect, ALL PROCEEDINGS are STAYED for a period of 28 days from the date of these Directions and ALL TIME LIMITS in any current proceedings are EXTENDED by the same period.
2.Any party to proceedings may apply for these Directions to be amended, suspended or set aside or for further Directions in relation to those proceedings.

The direction was issued on 24 March 2020. In essence, this puts all existing cases on a temporary 'hold' until Wednesday 22nd April 2020.

Any business with a case pending before the Tribunal can, however, apply to the Tribunal for the general stay to be amended suspended or set aside.

AS far as the other Courts are concerned, we understand that these courts (the Upper Tribunal, the Court of Appeal, the Court of Session in Scotland and the Supreme Court) are continuing to deal with cases albeit on a 'remote' or 'on the papers' only basis.

This general stay only applies to current cases that have been lodged with the Tribunal. Any businesses contemplating an appeal to the First-tier Tax Tribunal should still comply with the appropriate time limits.

Comment

It seems a sensible decision to impose a general stay on proceedings before the FTT. It may only be a matter of time before the higher courts follow suit. In the event, it must be considered likely that the stay will be extended beyond 22 April 2020 and, if that is the case, the FTT will issue a further general direction.

Under the Tribunal rules, a party wishing to lodge an appeal against a decision of HMRC must do so within 30 days (or longer if approved by the Tribunal). This requirement is not being stayed so any business contemplating an appeal should still abide by the strict statutory time limit.

For any assistance with the lodgement of appeals or for help conducting an appeal speak to your local Grant Thornton VAT advisor

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