Grant Thornton

An instinct for growth™

Indirect tax update

Edition 27/2020 – 23 July 2020

Summary

Welcome to this week's Indirect Tax Update.

As the UK heads, inexorably, to the end of the Brexit transitional period, HMRC has issued more guidance in relation to how the UK will operate its borders and the resulting import / export requirements.

This week, HMRC has issued two further guidance documents. Firstly, a document entitled "The Border with the European Union – Importing and Exporting Goods" sets out in detail how the new post-Brexit border with the EU will work.

Secondly, HMRC has also published a policy paper setting out the changes to VAT treatment of overseas goods sold to customers from 1 January 2021.

For all businesses involved in the trading of goods with businesses and consumers in the EU, both of these papers are essential reading. This second paper looks at how the VAT system will work in relation to the importation of consignments of goods not exceeding £135 from 1 January 2021 and sets out the different treatments where the supply of the goods is made through an online market place or where the goods are sold directly to the customer.

Nothing of any major importance or interest has been published by the Court of Justice this week and the Court has now closed for its summer judicial vacation. The Court will resume in September 2020.

Similarly, the UK Courts have been relatively quiet this week. However, we look at two cases from the First-tier Tax Tribunal (FTT). The first concerns the denial by HMRC of a claim for input VAT by a company involved in parcel delivery services. The case demonstrates how easy it is to fall foul of the VAT regulations.

The second case concerns the construction of a houseboat and whether the VAT incurred on construction could be reclaimed under the DIY Housebuilder's scheme. Another case where, had the taxpayer sought some VAT advice at the outset, the outcome may have been very different. The Tribunal concluded in this case that the VAT incurred was not reclaimable.

Preparing for Brexit

HMRC publishes further guidance

It is just over four years since the UK voted to leave the European Union in June 2016. The road to Brexit stalled for almost three of those years but, following the general election in December 2019, the Brexit plan has gained new momentum. The UK officially left the EU on 31 January 2020 and is now operating under a transitional regime until 31 December 2020. On 1 January 2021, the UK will introduce new VAT rules and it is imperative for all UK businesses to get to grips with them as soon as possible to avoid the risk of non-compliance etc.

From 1 January 2021 (which, at the time of writing, is only 160 days away), a different VAT regime will apply to supplies of goods arriving from outside the UK (including from EU Member States). The different treatment will depend on the value of the goods and whether or not the goods are physically located in the UK at the time that they are supplied. There will also be new rules where goods are supplied through online market places (for example through Amazon or similar online platforms). The new regime is intended to ensure that goods from the EU and non-EU countries are treated in the same way and that UK businesses are not disadvantaged by competition from VAT free imports. The new system should prevent overseas non-UK sellers of goods from avoiding payment of VAT on their UK sales.

In line with the threshold for customs duty liability, a new regime will apply to the importation of consignments that are valued at less than £135. In essence, the point at which VAT will be collected will move from the point of importation to the point of sale. In effect, import VAT will not be payable on the importation of these consignments but UK 'supply' VAT will be payable at the point of sale. Where online market places facilitate the sale of such goods, they will become responsible for collecting and accounting for the VAT due on the supply to the customer. Where goods are sold directly by the seller to the customer (ie not through an online market place) it will be the overseas seller's responsibility to register for UK VAT and to account for the VAT to HMRC in the normal way through a UK VAT return. For B2B sales of goods in excess of £135, these new rules will apply unless the business customer is registered for UK VAT and provides its VAT number to the seller. In such cases, the customer will account for UK VAT under the reverse charge mechanism. These new rules will not apply to consignments which contain excise goods (such as tobacco and alcohol) or to non-commercial transactions between private individuals.

The guidance note confirms that even though there will be no import VAT payable on consignments valued below £135, customs declarations will still be required for statistical purposes although these will be less detailed than for 'ordinary' importations. Where goods are physically located outside the UK at the point of sale and are, subsequently, imported into the UK, the VAT treatment will depend on whether the supply is made through an online market place. If an online market place is not involved in facilitating the sale there will be a supply by the overseas seller to the consumer which will be deemed to take place in the UK and liable to UK VAT. However, where an online market place is involved, the online market place will be deemed to make a UK supply to the consumer and will be required to account for the VAT due to HMRC.

Businesses established outside the UK and selling goods directly to UK customers where the goods are already in the UK at the point of sale are already liable for UK VAT on those sales under existing rules. Such businesses should already be VAT registered in the UK.

Where goods are located in the UK at the point of sale but are sold through an online market place, then irrespective of the value of the supply, the online market place will be deemed to make the supply of the goods to the customer. This change ensures that VAT on UK supplies is charged, collected and paid over to HMRC by the online market place and reduces the risk of non-compliance by overseas suppliers. As it will be the online market place that is deemed to be making the supplies, overseas suppliers may no longer be liable to be registered for UK VAT.

Comment – as ever, these new rules are complex. The foregoing is merely a summary of the changes and is not intended to cover all of these changes in detail. Businesses involved in the importation of goods for resale to consumers either directly or through an online market place must consider these new VAT and customs procedures to ensure that they are conversant and compliant. With only five months until the end of the transitional period, this is now a priority for all concerned.

First-tier Tax Tribunal – Y4 Express Ltd v HMRC

Whether company entitled to recover input VAT on delivery charges

The taxpayer company (Y4 Express Ltd (Y4)) is involved in the importation of goods from China including Hong Kong on behalf of Chinese suppliers. Y4 collects the goods, stores them where required and then arranges delivery of them to the final customers.

At one point, the company had an account with Royal Mail – known as a PPI account. This account entitled Y4 to a discounted delivery rate. For various reasons, Royal Mail decided to withdraw the PPI account from Y4 mainly because the volume of deliveries was not sufficiently high. Y4 and Royal Mail got into a dispute but, ultimately, the PPI facility was withdrawn. This meant that Y4 had to pay Royal Mail more for each delivery.

As a consequence, Y4 entered into a verbal agreement with an individual whereby the individual opened a PPI account with Royal Mail and agreed to let Y4 use his account to obtain the discounted delivery rates. Royal Mail would invoice the individual and Y4 would settle the account by providing the individual with sufficient funds. Eventually, this was done through a direct debit. From a VAT perspective, Y4 agreed to undertake the individual's VAT accounting requirements and it raised invoices in the name of the individual to itself. It was in relation to these invoices that HMRC denied the recovery of input tax.

HMRC argued that, by his own admission, the individual in question had simply 'facilitated' Y4's account with Royal Mail. He did this as a favour rather than in the pursuit of a business activity *per se*. He certainly did not enter into the agreement with a view to making any profit. Accordingly, HMRC argued that the individual did not carry on a business activity and, as a consequence, the invoices raised (on a self billing basis) by Y4 were not VAT invoices. As they were not VAT invoices, Y4 could not rely on them as evidence to support a claim for input VAT.

The FTT agreed with HMRC. It agreed that there was no economic activity undertaken by the individual and, as a result, the input VAT could not be reclaimed. It also agreed with HMRC that a penalty should be imposed. However, the FTT reduced the penalty to reflect the degree of co-operation.

Comment

In the circumstances, Y4 sought to circumvent the removal of the PPI facility provided by Royal Mail by interposing another entity as a 'front'.

Unfortunately, the arrangements between the friendly individual and the company backfired as HMRC took the view that there was no real 'economic or business' activity. This was not helped by the fact that the individual did not submit any VAT returns during the period and so did not account for any of the VAT that Y4 was claiming.

In situations where VAT is accounted for incorrectly (or not accounted for at all), HMRC has the power to raise penalty assessments against the taxpayer. Penalties for inaccuracies can be up to 100% of the tax due but can be mitigated for co-operation and disclosure.

In this case, the FTT dismissed the appeal in relation to the tax assessments but partly allowed the appeal against the penalty on the basis that the taxpayer had co-operated with HMRC.

First-tier Tax Tribunal – Edward Burrell

Whether the VAT incurred on the construction of a houseboat could be reclaimed under the DIY Housebuilder's scheme

This case concerns the construction of a houseboat and whether the VAT incurred on the construction costs could be reclaimed under the DIY Housebuilder's VAT Scheme.

Under section 35 of the VAT Act, where certain conditions are met, a person can make a claim for the VAT incurred on certain works. One of the conditions, however, is that the works in question must be either the construction of a building designed as a dwelling or a number of dwellings, the construction of a building for a relevant residential purposes (such as an old people's home) or must be a residential conversion (ie the conversion of a non-residential building to a residential building).

The question for the Tribunal, therefore, was whether, under the terms of the planning permission that was granted by the local authority, the works constituted the construction or conversion of a building.

HMRC argued that a houseboat is not a building and, as a result, the DIY scheme cannot apply.

The taxpayer argued that his home was clearly designed as a dwelling. In addition, he argued that Section 35 applied to his case because he had constructed a building designed as a dwelling, which was only to be used for a relevant residential purpose. It consists of self-contained living accommodation, with no provision for direct internal access from the dwelling to any other dwelling, or part of a dwelling and the use of the structure is not prohibited in any way and planning consent had been granted.

Furthermore, his home was never a vessel. At no stage could it have been used as a vessel. It has always looked like a dwelling. His home started life on land and could have remained there as a dwelling, had the Council permitted it. His home meets the definition of a building. It is built. It is a structure. It is fixed to the adjoining land. It is built for occupation and it meets all of the required characteristics to be a building.

As eloquent as the taxpayer's arguments were, unfortunately, the Tribunal dismissed his appeal. To be within the DIY scheme, the structure has to be a building. It was not doubted that the structure was the taxpayer's main dwelling and that it was designed as a dwelling. However, the structure was not a building and he could not, therefore, benefit from a refund under the scheme.

Comment

One has some sympathy with this particular appellant. The structure was built on land and complied with all of the planning requirements. It was also clear that the structure was to be the main residence and it was designed as a dwelling.

Unfortunately, the rules of the DIY scheme are set in statute. In particular, the law states that the works that qualify for a VAT refund are the construction or conversion of buildings.

The DIY scheme is only available to 'self-build' projects and it is not available where the person undertaken the project is doing so in a business capacity.

Had Mr Burrell undertaken the project with a view to selling the finished houseboat, the supply of it may have qualified for zero-rating. As a result, the VAT incurred on construction costs may have been reclaimable through a VAT return rather than through the DIY scheme.

Group 9 to Schedule 8 of the VAT Act applies the zero-rate to supplies of caravans or houseboats where, in the case of a houseboat, it is a structure that is designed or adapted for use solely as a place for permanent habitation not having means of, or capable of being readily adapted for, self propulsion.

It seems on the facts that the taxpayer's houseboat would have met these conditions but, in the circumstances, the FTT came to the conclusion that the houseboat was not a building and did not fall into the DIY scheme.

Contacts

Karen Robb
T +44 (0)20 7728 2556
E karen.robb@uk.gt.com

Nick Warner
T +44 (0)20 7728 3085
E nick.warner@uk.gt.com

Alex Baulf
T +44 (0)20 7728 2863
E alex.baulf@uk.gt.com

Daniel Sherwood
T +44 (0)1223 225616
E daniel.sherwood@uk.gt.com

Nick Garside
T +44 (0)20 7865 2331
E nick.garside@uk.gt.com

Paul Wilson
T +44 (0)161 953 6462
E paul.m.wilson@uk.gt.com

Claire Hamlin
T +44 (0)161 953 6397
E claire.a.hamlin@uk.gt.com

Morgan Montgomery
T +44 (0)121 232 5126
E morgan.montgomery@uk.gt.com

© 2020 Grant Thornton UK LLP. All rights reserved.

Grant Thornton' refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. Grant Thornton UK LLP is a member firm of Grant Thornton International Ltd (GTIL).GTIL and the member firms are not a worldwide partnership. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions. This publication has been prepared only as a guide. No responsibility can be accepted by us for loss occasioned to any person or refraining from acting as a result of any material in this publication.