



Indirect tax update

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Summary

Welcome to this week's Indirect Tax Update.

Another relatively quiet week in the world of VAT. This week we look at a Court of Justice Opinion on the VAT treatment of heat from an association of property owners to the property owners.

We also highlight HMRC's latest Business Brief on zero rating of digital advertising for charities.

Our update concludes with a recommendation for overseas businesses who will be supplying small value packets to UK recipients after 1 January 2021 to consider applying for the bulk imports simplification process to save time and resources.

WEG Tevesstraße

This case concerns the VAT treatment of supplies of heat by a collective of property owners to the property owners.

Acknowledging the scarcity of facts present in this referral the Advocate General (AG) considers a number of alternative scenarios, offering an analysis of each.

In particular, the AG considers whether sums paid were in respect of the common areas of the estate or related directly to the owners' areas, concluding that, if payments were made (not clear from the referral), any payment relating to communal areas would not be subject to VAT in accordance with German law. Payments relating to individual owners' areas, however, where a commensurate link exists between the supply of heat and any payment made, would be taxable supplies. On that basis, German law would be incompatible with EU law.

Comment: It will be interesting to see how this case proceeds given the seeming lack of facts that are material to the interpretation of the case. One to watch.

Court of Justice of the European Union (CJEU) Opinion - WEG Tevesstraße

Whether the supply of heat by an owner collective to the property owners is liable to VAT

A collective of property owners sought to reclaim VAT incurred on expenditure associated with the purchase and operation of a combined heating and power unit. It sold the electricity to a power company and supplied the heating to the property owners. The property owners were three separate legal persons and the property comprised apartments and offices of a public body and an entity of a municipality. The German tax authorities rejected the claim for input tax recovery to the extent that it related to the supply of heat, holding that, pursuant to German law, the supply of heat to property owners is exempt from VAT. Thus a substantial proportion of the VAT incurred was irrecoverable as relating to an exempt supply.

The case was referred to the CJEU with a view to ascertaining whether treating supplies of heat in these circumstances as VAT exempt was compatible with the VAT Directive.

Remarking on the scarcity of facts in the case files, the AG considered a number of alternative interpretations, making it clear that the referring court should review carefully the facts of the case in applying any subsequent Judgment of the CJEU.

Firstly, the AG took the view that the referral did involve some form of payment for the heat supplied to the owners, albeit that this was not clear in the case files.

Second, it was not clear whether the supply in question related to the common areas of the property estate or to the individual owners. Both scenarios were therefore addressed in the Opinion.

Thirdly, there was the question of whether any payment was made directly by the owners (ie: on presentation of a specific invoice relating to a specific cost) or indirectly as part of a wider package of services of which the heat formed a discrete element. Assuming consideration was paid by the owners, was this consideration commensurate with the supply of heat received, either directly or indirectly.

A further argument advanced by the German court was that the supply of heat could not be a supply for VAT purposes by virtue of the member's of the collective being also the owners of the properties.

The AG considered that the argument with regard to the owners being also the parties to the collective (and therefore that there was no supply) could not stand since the parties were separate legal entities. On that basis, any compensation paid constituted an 'economic activity'. Further the argument that the supply of heat would fall to be exempt as part of (an exempt) supply of property could also not stand since it could not, in the AG's view, be seen as being 'subsumed' or 'ancillary to' such a supply (if indeed such a supply existed).

If the referral concerned the supply of heat to the common areas, the AG did not see sufficient direct link between the supply and the compensation, if any, paid by the owners. The owners received benefit that was not commensurate with any compensation paid and the supply, subject to the facts, was not made 'for consideration'. On this basis, German law would be compatible with European law and any compensation would not be liable to VAT.

On the matter of the supply of heat to the individual areas, the AG saw in this case, a clearer link between the supply and the compensation paid. Whether payment was in the form of a direct and specific payment or as part of a wider 'bundle' of supplies, if the value was linked to the heat supplied this would constitute a supply for consideration. Under German law this would, it would appear, be exempt from VAT, an interpretation not supported by the VAT Directive. Accordingly, if this scenario was in point, German law was not compatible with EU law and the supply of heat would be taxable.

Revenue and Customs Brief 13 (2020): VAT charity digital advertising relief

HMRC clarifies supplies of advertising and related services that it considers qualify for zero rating

For charities and those involved in the charity sector, as well as those making supplies of digital advertising to such bodies, HMRC's recent Business Brief will be of interest.

The Brief further clarifies the VAT treatment of supplies of advertising to charities and when zero rating will apply.

In essence, the Brief seeks to distinguish between advertising that is of a general nature, and that which is directed at specifically identified recipients.

HMRC's view is that, providing the additional criteria are met, advertising of a general nature may be zero rated. Adverts that are directly targeted at individuals will be standard rated.

A number of examples are offered by HMRC for zero rating, including:

- Direct placements on third party websites
- Audience targeting
- Location targeting
- Pay-per-click adverts

Excluded from zero rating are some activities that are relatively easy to identify such as emails to specified individuals. More difficult may be the potentially grey area of social media/subscription website accounts, where individuals log in to their personal pages and sites use tools to apply advertisements to them when they are signed in. HMRC consider this to be standard rated as the content will be related to the individual's known likes, dislikes, interests or location, as a signed in member of the website.

Claims for VAT overpaid

Charities, their representatives and those supplying advertising and some accompanied services such as design and marketing, should review advertising activity. Where appropriate, claims backdated 4 years may be submitted (with the proviso that unjust enrichment may apply).

Apply to import multiple low value parcels on one declaration from 1 January 2021

HMRC issues guidance on how to apply for the facility to use the bulk import reduced data set to declare one or more low value parcels in a single import declaration when importing goods to Great Britain.

From 1 January 2021, changes to the existing rules come into force that may affect businesses established outside the UK who supply goods of a low value to recipients in the UK. This customs simplification seeks to reduce the administrative burden of making multiple import declarations by allowing businesses to consolidate those transactions into a single import declaration.

Additionally, registration will allow businesses to provide a reduced level of data, saving time and resources.

Note that businesses already using the low value bulking of imports procedure may have to re-apply (although this will be communicated to them by HMRC).

Comment

In a move that is long overdue, HMRC now accept that certain forms of digital advertising may be treated as zero rated in the same way as their 'paper' counterparts.

This will be good news for charities who are increasingly seeking to direct their advertising budgets to identify supporters via more diverse routes.

In addition to charities themselves, representatives of charities and suppliers of advertising, including design, marketing and similar services to charities may wish to review the Brief to identify whether their services may be zero rated.

Comment

With the end of the transition period fast approaching and many overseas businesses become liable to register for VAT in the UK, this simplification will be a potentially valuable administrative tool.

A number of criteria must be met, however, businesses supplying 'postal packets' which individually are valued below £135 may be included in this procedure. This includes letters, parcels, packets and other posted items.

It is recommended that businesses review their current arrangements and consider whether, from 1 January 2021 they will have a liability to register for UK VAT and whether this simplification would be of benefit.

Contacts

Karen Robb

T +44 (0)20 7728 2556
E karen.robbs@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

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