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Indirect tax update

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Summary

Welcome to this week's Indirect Tax Update.

In last week's ITU we covered the guidance issued by HMRC in relation to the VAT accounting rules that are to be adopted from 1 January 2021 for trade in goods between Great Britain (GB) and Northern Ireland. We commented that the guidance document issued by HMRC created more questions than it provided answers.

This week, HMRC has published further guidance in response to questions raised about the Irish Protocol by the Large Professional Service Firms (LPSF) group. Our main article today sets out a number of the questions that were raised and the answers that were provided.

In the absence of any major judgments from the Court of Justice this week we look at two decisions from the UK's First-tier Tax Tribunal (FTT).

The first case involves Southampton University Student's Union and its failed attempt to argue that supplies of food and drink it supplied to students were supplies that are closely related to a supply of education. The Union claimed that it provided education or vocational training and that the supplies of food and drink were somehow closely related. The FTT was not persuaded of that argument and dismissed the Union's appeal.

In a separate case, the FTT has considered whether a charitable rowing club's construction of a new boathouse could be zero-rated. The club argued that the boathouse was to be used otherwise than in the course or furtherance of a business which meant that the use would qualify for zero-rating as 'relevant charitable' use. However, the FTT found that the boathouse was intended for use for business purposes and dismissed the club's appeal.

The Tribunal then considered whether a penalty imposed by HMRC should be withdrawn. In the circumstances, and on the evidence, the FTT confirmed that the club had a reasonable excuse for issuing an incorrect zero-rate certificate.

HMRC issues further guidance on VAT accounting post Brexit

HMRC answers questions posed by Large Professional Services Firms

The Large Professional Services Firms (including Grant Thornton UK LLP) have met with HMRC to elicit further details of how the new VAT accounting arrangements will work for trade in goods between Northern Ireland and Great Britain after the transitional period expires on 31 December 2020. Readers will be aware that HMRC issued a guidance document on 26 October (see ITU 36/2020) which set out the basic new rules. However, there were many unanswered questions and HMRC has now published further guidance in a series of answers to questions posed by the LPSF Forum.

HMRC has confirmed that Northern Ireland is, and remains, part of the UK's VAT system. There will be no requirement for a new VAT registration for sales of goods in Northern Ireland. If a business is already VAT registered, its existing VAT registration will be unaffected and it will not need to get another VAT registration.

Similarly, businesses moving goods moving into, out of, or within Northern Ireland will continue to account for VAT on all sales across the UK through their single UK VAT return, which will contain the same boxes as now. UK VAT will continue to be accounted as it is currently on goods sold between Great Britain and Northern Ireland. This means that the seller of the goods will continue to charge its customers UK VAT and the seller should show this on its invoices. The VAT charged will be accounted for as output VAT on the seller's VAT return in the same box as it is now. Where the customer receives an invoice from the seller showing that UK VAT has been charged, it may use this as evidence in order to reclaim the VAT as input VAT, subject to the normal rules.

As far as statistical returns are concerned, HMRC has confirmed that Intrastat returns will not be required for the movement of goods between GB and NI. Intrastat returns will, however, be required for certain movements of goods (goods imported into GB from the EU, goods imported into NI from the EU and goods exported from NI to the EU). Goods exported from GB to the EU will not require a supplementary declaration.

In 2019, HMRC amended its policy in relation to the recovery of import VAT. This change confirmed that only the owners of imported goods are entitled to reclaim import VAT. Given that goods moving from GB to NI (and vice versa) are, according to the EU Commission, to be treated as imports and exports, there was some concern that the new policy would also apply to these movements. HMRC has confirmed that its interpretation of the Protocol means that it is able to collect what is, technically, import VAT by maintaining the existing system of VAT accounting (ie collecting VAT on supplies). As such, there will be no requirement for businesses in GB or NI to be the owner of the goods in question. Provided that the purchaser has a tax invoice issued by the seller, that will be sufficient to qualify for input VAT (as opposed to import VAT) recovery. There are a number of exceptions to this rule. Where goods are declared to a special customs procedure, are subject to a domestic reverse charge or are subject to an Onward Supply procedure, the customer or the importer will be required to account for any VAT due through its VAT return.

Many overseas businesses will be required to register for VAT in the UK when they operate under Delivered Duty Paid terms of trade (DDP). However, HMRC has confirmed that it is still considering the operational impact of allowing non-established businesses to register outside of the usual 30 days future test rule set out in UK VAT law. (Where a business expects to exceed the UK VAT registration threshold within the next 30 days it has an immediate liability to register for UK VAT).

Finally, the VAT status of yachts post Brexit was raised. Many yachts are based in EU Member States' territorial waters but where VAT has been paid in the UK. Many owners are concerned whether such yachts will retain their VAT paid status after 31 December 2020 and HMRC has confirmed that provided certain conditions are met, the return of the yacht to the UK should qualify under what is known as returned goods relief (RGR) The main rule of RGR is that the goods (here the yacht) must have been exported from the UK and returned within three years of export by the same person. For yachts that have been in other EU States for more than three years, they will be given an additional year to return to the UK without incurring VAT and customs duties.

Comment – with only eight weeks to go before the end of the Brexit transitional period, it is good to get further clarity from HMRC on the operation of these new rules. As far as trade between GB and NI is concerned, retention of the status quo seems to be a pragmatic and practical solution albeit there will be instances where the exceptions will apply.

First-tier Tax Tribunal – Southampton University Student's Union (SUSU)

Whether Union's supply of food and drink to students a closely related supply to a supply of education

Under UK VAT, supplies of education and vocational training are exempt from VAT if the are provided by an eligible body. In addition, other supplies can also be exempt from VAT if they are supplied by an eligible body and are, or are deemed to be, closely related to the principal supply of education or training.

In this case, the Student's Union of Southampton University argued that both the supply of hot drinks and hot food from its on-campus shop were exempt from VAT as supplies made by an 'eligible body' which were closely related to its principal supply of vocational training. The Union argued that it provided its own supplies of education and/or vocational training acting as principal in doing so. It cited training of academic representatives, clubs/societies committees, preparation for candidates for elected positions, training on using LinkedIn, a safety/welfare programme, food safety and hygiene training and safety bus driver training. SUSU considered itself to be an eligible body (being a registered charity precluded from distributing profits).

Unfortunately, the Tribunal was not convinced. The FTT determined that, notwithstanding that the activities offered or provided by SUSU were no doubt useful as 'life skills' or 'on the job training' they did not meet the statutory definition of vocational training. Moreover, SUSU had provided insufficient evidence to demonstrate how these courses and activities constituted training, re-training or work experience for any trade, profession or employment. SUSU had also failed to establish that it made a supply of education or vocational training and accordingly, it did not make a principal supply for VAT purposes. Additionally, as no consideration was paid for the majority of SUSU's training activities, there could, to that extent, be no 'supply' to which VAT exemption (and therefore exemption of supplies 'closely related' to a VAT exempt activity) applied. The appeal was dismissed.

Comment

On the face of it, this case seemed to be doomed to fail given that the FTT has dismissed similar appeals by other UK Student's Unions.

The Tribunal was not convinced by SUSU's novel arguments that its own provision of various training qualified as vocational training within the meaning of the VAT Act.

Vocational training has a specific definition in UK VAT law and means training, retraining or the provision of work experience for any trade, profession or employment or any voluntary work connected with education, health and safety or welfare or the carrying out of activities of a charitable nature.

In addition, for there to be a supply for VAT purposes goods or services must be provided in return for consideration (normally payment).

First-tier Tax Tribunal – Swanage Sea Rowing Club

Whether the construction of a new boathouse qualified for zero-rating and whether a penalty for issuing an incorrect certificate should be imposed.

There have been many cases over the years where not-for-profit organisations have fallen foul of UK VAT law and, as in this case, have then found themselves facing a civil penalty. Here, the issue was whether a new boathouse constructed by the rowing club could qualify for zero-rating. Having considered the published guidance, and having discussed the matter with HMRC's helpline, the club decided that the construction qualified for zero-rating and it issued a certificate to the contractor claiming such.

To qualify for zero-rating, a building must be intended for use otherwise than in the course or furtherance of a business by an entity that is precluded from distributing its profits. The question in this case was whether the new boathouse was intended to be used solely for a relevant charitable purpose (ie for non-business purposes). The Tribunal found that, on the evidence, that was not the case. The Club was a member's organisation and the members paid an annual subscription. Moreover, each member had to pay a £1 per row fee, each time he wished to be involved in rowing the boats. The FTT found that these were business activities and, as such, the boathouse could not be said to be used otherwise than in the course or furtherance of a business. The substantive appeal was dismissed.

The next question to resolve was whether the club had a reasonable excuse for the incorrect issue of the zero-rating certificate to the contractor. The club confirmed that it had read the published guidance in HMRC's notices and had even consulted by telephone with HMRC's hotline. However, it seems that the advice given by the hotline was predicated on an assumption that the boathouse was not to be used for business purposes. In the circumstances, the FTT was satisfied that, despite misconstruing the advice, the club had a reasonable excuse for issuing the certificate. Its appeal against the penalty was allowed.

Comment

For a building to qualify for zero-rating it must, generally, be intended for use as a dwelling, a relevant residential purpose or for a relevant charitable purpose. As far as the latter is concerned, this means use by a charity otherwise than in the course or furtherance of a business or as a village hall or similar providing recreational facilities for a local community. The courts and tribunals are littered with cases where the body in question has failed to satisfy the relevant (and stringent) conditions. Where an entity supplies any goods or services in return for payment or other consideration the activities will generally be regarded for UK VAT purposes as business activities. Such activity will generally preclude the construction of a building intended for use by that entity from being eligible for zero-rating. Issuing an incorrect zero-rating certificate can, as here, lead to the imposition of a substantial penalty.

Contacts

Karen Robb	Nick Warner	Alex Baulf	Daniel Sherwood
T +44 (0)20 7728 2556 E karen.robb@uk.gt.com	T +44 (0)20 7728 3085 E nick.warner@uk.gt.com	T +44 (0)20 7728 2863 E alex.baulf@uk.gt.com	T +44 (0)1223 225616 E daniel.sherwood@uk.gt.com
Nick Garside	**Paul Wilson**	**Claire Hamlin**	**Morgan Montgomery**
T +44 (0)20 7865 2331 E nick.garside@uk.gt.com	T +44 (0)161 953 6462 E paul.m.wilson@uk.gt.com	T +44 (0)161 953 6397 E claire.a.hamlin@uk.gt.com	T +44 (0)121 232 5126 E morgan.montgomery@uk.gt.com

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