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Indirect tax update

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Summary

Welcome to this week's Indirect Tax Update.

The Court of Justice of the European Union (CJEU) and the UK courts have been particularly quiet this week with no significant judgments or decisions to report. However, with, literally, only days to go now before the Brexit transition period expires, we look at a number of developments on the taxation front.

Firstly, the Government has published the Taxation (Post-transition Period) Bill. The Bill was considered at Second Reading and Committee of the Whole House stages on Wednesday 9 December 2020 and will now progress to Report stage on a date yet to be announced.

The Bill makes provisions (including the imposition and regulation of new duties of customs) in connection with goods in Northern Ireland and their movement into or out of Northern Ireland. The Bill also makes consequential amendments to UK VAT law.

The main focus is in connection with the movement of goods to and from Northern Ireland and the liability to both customs duty and VAT. In particular, the Bill, as proposed, imposes a liability to customs duty where goods are removed from Great Britain (ie the UK excluding Northern Ireland) which are not 'domestic' goods or are goods 'at risk of subsequently being moved into the European Union'.

The Government has also published a statutory instrument this week to extend the period of application of the reduced rate of VAT to supplies in the hospitality and tourism sectors as a result of the Coronavirus pandemic.

Finally this week, HMRC has issued a policy paper setting out its views on how UK businesses should account for VAT on services between the UK and EU member states from 1 January 2021. This is essential reading for any business that intends to supply services after the transition period comes to an end on 31 December 2020.

Preparing for Brexit - Government publishes Taxation (Post-transition Period) Bill

Proposed legislation relating to the imposition of customs duty and VAT in relation to goods entering or leaving Northern Ireland post Brexit

The Government has introduced the Taxation (Post-transition Period) Bill which is to amend the existing provisions of the Taxation (Cross-border Trade) Act 2018 (TCTA). The Bill has already cleared the 1st and 2nd reading stages and has cleared the 1st committee stage and will now go on to the Commons report stage. With only 22 days before the transitional period expires, the Government is certainly going down to the wire with some really crucial legislation that deals with the taxation (customs duty and Value Added Tax) of the movement of goods between GB and Northern Ireland and the remaining EU and Northern Ireland after Brexit. The Northern Ireland Protocol - the agreement between the UK and the EU on how trading in goods will operate from a fiscal standpoint after Brexit – will treat the territory of Northern Ireland as if it were still within the EU Single Market whilst retaining its status as a part of the United Kingdom. This notion causes many difficulties from a tax perspective not least because Northern Ireland has an open land border with the Republic of Ireland which is to remain a full-blown member of the European Union after Brexit and there is no appetite for any kind of hard border between the two. Consequently, we are left with a compromise arrangement.

From a customs duty perspective, the Bill proposes to impose a duty liability for the movement of goods between GB and Northern Ireland. New section 40A of the TCTA provides that goods moving to Northern Ireland from Great Britain, that are not domestic goods or are 'at risk' of subsequently being moved into the European Union will be chargeable to customs duty in accordance with Union customs legislation. Exactly what is or is to be regarded as 'at risk' goods is yet to be determined but the Treasury will make regulations in this regard in due course. Duty under this section is to be charged in accordance with existing Union customs legislation as if the goods subject to the charge were brought into the customs territory of the European Union. (even though NI will technically be outside the EU). The problem this section is addressing is that goods could be moved from (say) England to Northern Ireland on a 'duty free' basis and then be shipped onward to the EU (through the Irish border) without payment of import duty and / or import VAT. The measure imposes EU duties and VAT and is intended to level up the playing field and avoid distortion of competition.

Section 30C TCTA imposes a similar liability to customs duty for goods moving the other way from Northern Ireland to GB where the goods are not 'qualifying Northern Ireland' goods. The term 'qualifying Northern Ireland goods' is defined by statutory instrument as goods which are either present in Northern Ireland and not subject to any customs control or they are goods that have undergone processing operations carried out in Northern Ireland.

From a VAT perspective, the new legislation ensures that VAT is due on the acquisition of goods from other Member States of the remaining EU where the goods are acquired in Northern Ireland and on the importation of goods from third countries.

There are similar provisions in the Bill to impose excise duty on the movement of excisable goods between Northern Ireland and GB (and vice versa).

Comment – The Bill has yet to clear the normal parliamentary process and, at this late stage, it seems unlikely that it will undergo any major changes albeit it still has to go before the House of Lords. Assuming that the Bill becomes an Act, there are some major fundamental changes to customs, excise and VAT law in relation to the trading of goods involving Northern Ireland. The law is complex and new and is being introduced in fiscal terms at the 11th hour and 59th minute. It is hoped that HMRC will recognise this complexity and proceed with a 'light touch' after the new rules come into force.

Statistical Instrument – Covid 19

5% reduced rate extended to March 2021

Businesses in the hospitality and tourism sectors have been thrown a further lifeline this week by the Treasury. The Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Extension of Time Period) (Coronavirus) Order 2020 was laid before Parliament on 3 December 2020 and comes into force with effect from 11 January 2021.

Readers will recall that from 15 July 2020, UK VAT law was amended to impose a reduced rate of 5% on various supplies connected with the hospitality and tourism sectors. These included supplies of restaurant meals and take-away hot food, the admission to various 'events' such as cinemas, theatres and amusement parks, and to supplies of accommodation etc in hotels and other similar establishments. When the law was changed, the period of application was limited from 15 July 2020 to 12 January 2021.

The Coronavirus pandemic has not abated and businesses in these affected sectors have suffered as a result. The Treasury has recognised these difficulties and has now extended the period of application of the reduced rate from 12 January 2020 to 31 March 2021.

Businesses in the affected sectors may continue to apply the reduced rate of 5% to their qualifying supplies.

Comment

It is difficult to imagine the enormity of the economic impact of the COVID-19 pandemic on the hospitality and tourism sectors.

When the reduced rate of 5% was introduced in July 2020, few would have predicted that it would need to be extended to March 2021. Fortunately, the Treasury has recognised that many businesses in these sectors are struggling and has sought to lessen the impact a little by reducing the rate of VAT chargeable on qualifying supplies.

Hopefully, the application of the reduced rate of 5% will help to stimulate some demand and help affected businesses through the crisis.

Preparing for Brexit – Services post Brexit

HMRC issues Policy Paper on VAT Accounting for services post Brexit

This week, HMRC has published a policy paper entitled "Accounting for VAT on services between the UK and EU member states from 1 January 2021". The paper confirms that, from 1 January 2021 following the end of the transition period with the EU, the VAT rules applying for supplying services between the UK and EU member states will become the same as the current rules for supplying services from the UK to outside the EU.

Supplies of services have a special set of rules (the place of supply rules) which determine the country where the service is deemed to take place. From 1 January 2021, the existing rules for supplies of services to customers outside the EU will also apply to supplies to customers in the EU and affected businesses will need to apply these rules from that date.

Most B2B (business to business) supplies of services are deemed to take place in the country where the business customer is established. However, there are some particular exceptions to that rule. Similarly most B2C (business to consumer) supplies of services are deemed to take place where the supplier is established, but again, there are a number of important exceptions. HMRC's policy paper and public notice 741 provide detailed guidance on these rules.

One of the important changes is in relation to what is known as the 'use and enjoyment' rule. In essence, this rule varies the general place of supply rule if the use and enjoyment of a service takes place in a country other than that determined under the general rule. For example where a supplier established in the UK supplies goods on hire to a Spanish business customer, but the hired goods are physically located in France during the hire period, under existing rules, the place of supply would be Spain (where the business customer is established). However, from 1 January 2021, the place of supply will be France (where the use and enjoyment of the hire takes place) which may mean that the UK supplier will be required to register and account for VAT in France.

Similarly, under the current rules, the supply of certain 'professional' services (accounting, legal and consultancy services etc) to private individuals established outside the EU are deemed to be outside the scope of UK VAT . From 1 January 2021, this rule will be extended to supplies to private individuals if they are established outside the UK.

Comment

The place of supply rules determine the location of supplies of goods and services for VAT purposes. The rules ensure that supplies can only be taxed in one particular place and only one tax authority is entitled to collect any tax due.

The rules are, however, complex and the place of supply can depend on many things including the nature of the supply, the location of the supplier, the location of the buyer and the place of effective use and enjoyment.

From 1 January 2021 the place of supply of certain services will change – in particular, those services affected by 'use and enjoyment' rules and supplies of 'intellectual' services supplied to private individuals in the EU.

One piece of good news is that from 1 January 2021 there will no longer be a requirement for suppliers of services to EU business customers to file a European Sales List (ESL).

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