

Indirect tax update

September 2019

Summary

Welcome to this week's Indirect Tax Update.

The world of indirect tax remains relatively quiet with only the First-tier Tax Tribunal publishing case decisions this week.

The first case we look at relates, once again, to the VAT exemption for the supply of medical care. This time, the issue was whether the company in question – Medacy Ltd – was supplying medical care services or simply supplying people to a GP practice which itself was providing the medical care to its patients.

This is a common issue and the Tribunal confirmed that there is a very thin line between the two types of supply and, in most cases it will be necessary not only to look at the contractual obligations of the parties, but also the economic reality. In this case the Tribunal agreed with the Appellant company and allowed its appeal.

The second case concerns a question of whether a supply received by the Appellant was a supply of goods or a supply of services and if the supply was one of goods, whether they were 'capital in nature'.

The Great Escape Game Ltd owns and operates a facility in Sheffield where participants in the game are required to 'escape' from a room. The rooms were designed by the company but the building of them was sub-contracted to a third party. HMRC considered that the sub-contractor actually provided services to the company and not goods.

The company was in the VAT Flat Rate scheme under which the rules preclude the recovery of any input VAT unless it relates to the supply of capital goods costing more than £2,000. The Appellant contended that the rooms and the sets and props that it purchased were supplies of goods and that they were capital in nature. The Tribunal agreed and allowed the appeal in relation to the rooms, sets and props.

Finally, the EU VAT Expert Group has published explanatory notes in relation to the new EU VAT rules. These notes are intended to provide guidance to Member States for the common interpretation of the new 'Quick Fix' VAT rules from 1 January 2020.

First-tier Tax Tribunal – Medacy Ltd

VAT – exemption for supplies of medical care

Just as with last week's Indirect Tax Update, we lead again this week with a case relating to the provision of medical care services by a company and whether those services are exempt from VAT.

The Appellant company – Medacy Ltd - had two main strands to its business. Firstly, it supplied locums. This was a long established business and there was no dispute here that, in relation to locums, it was supplying staff for VAT purposes and that such supplies were liable to VAT at the standard rate. Secondly, it had recently ventured into the provision of Pharmacist led clinical services. These services were provided to local General Practitioner (GP) practices. The supply required the provision of a Pharmacist to a GP practice and HMRC took the view that this supply was, in fact, no different to the supply of locums. HMRC considered that there was a supply of staff for VAT purposes and it assessed Medacy Ltd for VAT in relation to the supplies.

The Tribunal considered earlier case-law including the cases of Sally Moher, Rapid Sequence Ltd and City Fresh Ltd. It concluded from these cases that what is important is whether the person supplied falls under the control and direction of the customer. In this case, Medacy claimed that in the circumstances, it maintained sufficient control, direction and supervision of its Pharmacist for it not to be regarded as a supply of staff but for the supply to be categorised as a supply of medical care services.

The evidence presented to the Tribunal in support of its claim was that the contract with a GP practice set out exactly what services would be provided by the Pharmacist, it had its own infrastructure including an Operations Director and a Senior Pharmacist who oversees the pharmacists involved in providing the clinical services, pharmacists are employed by Medacy under permanent contracts and are paid a salary whereas the GP practices are charged an hourly rate and Medacy paid for expensive insurance cover to protect it from claims for medical malpractice.

In the end, the Tribunal accepted that the evidence presented to it showed that the Appellant was on the right side of a thin line. The fact that it had medical insurance to cover the risk of being sued for medical mal-practice seemed to be the decisive factor but taking all of the factors together, the Tribunal was satisfied that the company was not supplying staff but was supplying the underlying medical care service that was exempt from VAT. – Appeal allowed

Comment – there have many cases over the years where the taxpayer has claimed that he is supplying an underlying service when, in fact, what is being supplied is human resource which is used by another party to provide the underlying service.

In this case, HMRC seem to have assumed that the supply of Pharmacist led clinical services was an 'add-on' to the businesses existing business of providing locums. That was not the case. On the evidence, the Tribunal was satisfied that the company retained sufficient control, direction and supervision of the Pharmacist. Other evidence such as the contractual arrangements agreed between the company and the GP practice and the fact that the company had insurance in place – something that would not have been required if all that was being supplied was human resource – confirmed that the service provided by the Appellant was one of medical care.

First-tier Tax Tribunal

The Great Escape Game Ltd

The Appellant operates an 'escape room' type business in Sheffield. The 'players' enter a room and are required to solve puzzles etc to move around the room and eventually, to escape from the room. Rooms are themed for a particular game and are specifically designed to fit with the chosen theme. Inside many rooms are 'sets' (just as a stage is set for a play) and there are 'props' which players can use in order to help solve the puzzles. The company designed the rooms, sets and props but subcontracted their manufacture and installation to a third party.

With that background, the company was registered for VAT under the VAT Flat Rate Scheme. Under the rules of the scheme, a business accounts for 'output' VAT at a fixed percentage but is precluded from reclaiming any input VAT unless the input VAT relates to capital expenditure in excess of £2,000. HMRC argued that the sub-contractor was supplying design and installation services to the Appellant and, as a result, no VAT could be reclaimed under the Flat Rate Scheme. On the other hand, the Appellant argued that it alone designed the Rooms etc and that, in fact, all that was supplied to it was the finished rooms and sets. These were supplies of goods and were capital in nature as they were to be used over an extended period of time and were not 'consumed' by the business.

The Tribunal was satisfied on the evidence that, in relation to the rooms, sets and props, the subcontractor's supply was one of goods. In relation to other miscellaneous supplies, the Tribunal found that the contractor provided services. The appeal was allowed in relation to the rooms, sets and props but was dismissed in relation to the miscellaneous services.

Comment

HMRC took the view in this case that the sub-contractor provided design and installation services and that the goods element of the supply was ancillary to the main supply of the services.

The Tribunal took a different view. It asked the question 'what did the appellant purchase?' and answered that question with 'a finished installed room'. The Tribunal considered that the supply of a finished installed room was a supply of goods.

In the unusual context of Great Escape's business, this was not decoration or building work (services); it was the provision of a finished room which was supplied in situ in Great Escape's building.

Appeal Allowed

European Union VAT Law

Commission publishes draft explanatory notes on VAT "Quick Fixes" legislation

Businesses that are involved in cross-border trade should be aware that EU VAT law is changing on 1 January 2020 in relation to:

- VAT treatment of 'call-off' stock
- VAT treatment of 'chain' transactions
- The VAT exemption for intra-community supplies of goods and
- Proof of transport

The VAT Directive and the VAT implementing regulations have already been enacted and come into force on 1 January 2020. (See our Briefing Paper – VAT 'Quick Fixes' represent a significant risk for businesses).

To ensure that the new rules are applied uniformly across all Member States, the European Commission has produced explanatory notes covering how the new law is to be interpreted. However, These explanatory notes are not legally binding and only contain practical and informal guidance about how EU law should be applied on the basis of the views of the EU Commission's Directorate General for Taxation and Customs Union.

The explanatory notes run to 72 pages but are essential reading for tax authorities, taxpayers and advisors. We will be providing an update to our Briefing Paper in due course. In the meantime, businesses should be preparing for the implementation of the new rules and should contact their usual Grant Thornton VAT advisor for any help or assistance.

Comment

The new rules that come into force in January 2020 are intended to simplify VAT accounting for affected businesses and VAT administration for Tax Authorities throughout the EU. It seems somewhat ironic, therefore for a set of explanatory notes to run to 72 pages.

Non-compliance with the new rules (especially those relating to reporting requirements) will lead to cross-border supplies becoming liable to VAT after 1 January 2020.

Affected businesses should familiarise themselves with these new rules and ensure that their accounting systems can capture and report the movement of goods in the manner required by the new legislation.

Contacts

Stuart Brodie

T +44 (0)14 1223 0683
E stuart.brodie@uk.gt.com

Karen Robb

T +44 (0)20 772 82556
E karen.robby@uk.gt.com

Nick Warner

T +44 20 7728 3085
E nick.warner@uk.gt.com