Grant Thornton

Indirect Tax Update

Edition 12/2021 –25 March 2021

Summary

Welcome to this week's ITU.

In this week's ITU we consider two European cases, both relating to Polish VAT law.

In G. sp.z o.o the issue was whether the Polish authorities were entitled to require businesses bringing fuel into Poland to pay acquisition VAT in advance of being able to recover the corresponding input tax on the VAT return.

The AG considers that, whilst national authorities do have the power to put in place measures to protect against VAT fraud, VAT cannot be collected that is not yet 'chargeable'. Equally, VAT which is not yet 'chargeable' cannot be regarded as an interim payment and any such payment must, in any event, be calculated based on the net amount of VAT due in the period.

In the case of P, the Polish tax authorities sought to deny an adjustment to output tax overpaid by virtue of their having commenced a VAT investigation, (whilst simultaneously endeavouring to deny input tax deduction). This was rightly rejected by the judge. As there was no suggestion of fraud and no tax loss, the Polish authorities could not expect to have their cake and eat it.

We conclude this week with a reminder that the 'soft landing period' for Making Tax Digital (MTD) ends on 1 April 2021.

Businesses within the MTD regime should review their accounting procedures to ensure that they can meet the full MTD digital link requirements.

Case C-855/19 G. sp. z o.o. (G) V Dyrektor Izby Administracji Skarbowej w Bydgoszczy

Whether the tax authorities are entitled to collect VAT due on acquisitions of fuel in advance of VAT being recoverable by the taxpayer on the same supply under the reverse charge

G, a Polish company, brought fuel into Poland. As part of its fraud prevention measures the Polish VAT authorities introduced a 'fuel package', a series of measures designed to reduce VAT fraud specifically in relation to fuel (an area identified as being at particularly high risk).

One aspect of this package was to require businesses acquiring fuel in Poland to remit output tax to the tax authorities within five days of the fuel arriving in the country, irrespective of whether a tax invoice had been raised by the taxpayer. The corresponding input tax was then recoverable on the next VAT return. Having failed to pay this output tax on time, G appealed on the basis that Polish VAT law was ultra vires the VAT Directive by virtue of the fact that such supplies would be afforded less advantageous treatment than equivalent domestic supplies.

The AG considered four aspects to this appeal. Firstly, that domestic transactions and those involving businesses from another member state should be given parity of treatment when comparing the same activities. In this regard, the AG considers that, for VAT purposes, acquisitions are different in nature from domestic supplies. As such, member states are not precluded from putting in place different time limits in relation to certain acquisitions where there is an enhanced risk of fraud. On the second point, the AG examined whether measures put in place by the Polish authorities to combat VAT fraud are compatible with EU law. On this point, the AG considers that Poland is acting within the scope of EU law, the provisions of the 'fuel package' that provided for early collection of tax being regarded as proportionate.

Turning to the third and fourth points, the AG considered whether Polish VAT law was compatible with Articles 62 and 69 of the VAT Directive.

The AG explained the process of the collection of VAT as having three separate and successive stages: the chargeable event, chargeability and the obligation to pay. In order for an obligation to pay to arise, the tax must become chargeable; for the tax to be chargeable, the chargeable event must have occurred beforehand. Concluding that the chargeable event had occurred (the receipt of the goods into the member state), the VAT became chargeable per the VAT Directive on the fifteenth day following the end of the period in which the chargeable event took place (or earlier if an invoice had been raised). Only at this point did there occur an obligation to pay.

In this case, as the VAT had not become 'chargeable' (only five days having passed since the chargeable event) it could not be collected by the tax authorities. As to whether the payment could be collected as an 'interim payment', again only VAT properly chargeable could be collected and then only the net amount of VAT due for the whole VAT period. To require payment of the gross amount would have the effect of treating transactions individually, a concept that runs counter to the principles of EU VAT law.

Comment – Whilst this case is largely specific to Polish VAT law, the AG has provided a useful reminder of the discrete and linear nature of the stages involved in the collection of VAT. It will be interesting to see whether the Court follows the AG's opinion.

Case C-48/20 - UAB 'P.' v Dyrektor Izby Skarbowej w B.

Whether an adjustment to output tax can be denied where, whilst VAT was not due, an investigation into the company's activities had already commenced

UAB P (P), a Lithuanian company, made supplies of fuel cards to Lithuanian haulage drivers. The cards were used by drivers to purchase fuel in Polish service stations. The cost of the fuel was, in turn, charged to P by the service stations. Having commenced an inspection into P's tax affairs, the Polish authorities concluded that the supply of the fuel cards was not a standard rated supply of fuel in Poland. Rather, it considered that, under Polish law, since the hauliers had freedom to choose the type of fuel and where to purchase it, the supply was one of VAT exempt financial services by P.

On the basis that it had already begun an investigation into P's affairs before the error was identified, the authorities sought to deny P the right to adjust its VAT returns to reflect the VAT overpaid. Additionally, it denied P the right to input tax recovery on the invoices for fuel from the service stations as not relating to a taxable supply made by P.

The matter was referred to the CJEU. The judge has determined that the fact that an inspection had commenced did not preclude P adjusting the VAT overpaid and to do so would offend the principles of proportionality and fiscal neutrality since denying an adjustment of output tax would result in double taxation when taking into account the denial of input tax recovery. Furthermore, had P invoiced correctly, the hauliers would have received VAT invoices from the service stations and would have recovered the VAT charged accordingly. As there was no indication of fraud, the transactions did not present a risk to the revenue and output tax adjustment should not be denied.

Comment

This is a logical judgment. It would appear that it was regular practice in Poland to treat such transactions as a chain of taxable supplies, VAT being deductible at each stage in the chain (subject to each party being a taxable person).

Re-defining the supply of the fuel cards as a VAT-exempt transaction whilst at the same time denying the taxpayer the right to adjust the output tax it had overpaid, given that there was no suggestion of fraud, would, as the judge pointed out, have offended the principles of proportionality and fiscal neutrality.

In the UK, whilst a VAT inspection may result in a penalty or assessment, this would not have the effect of denying the correct VAT treatment of the transactions.

Making Tax Digital (MTD) – end of the 'soft landing' period

HMRC's requirement for full 'digital links' in the VAT return process come into effect from 1 April 2021

Whilst the introduction of MTD may seem an eternity ago for some, for many businesses, there remain challenges to meeting HMRC's stated requirements to bring VAT to account using a fully digital 'journey'.

Complex interfaces, legacy systems inherited via acquisitions and mergers, diversity of business activities and accounting procedures may all contribute to a less than seamless transfer of data from the originating transaction to the VAT return. Add to this COVID-19 and IT staff being unable to access premises and it would be entirely understandable if these new requirements may not be fully met, notwithstanding that the VAT returns may be correctly submitted electronically and the correct amount of VAT paid on time.

Indications thus far are that there has been no change in the requirement to meet the full digital links criteria. We are therefore recommending that businesses review their VAT accounting procedures and, if any issues are identified, these are raised with HMRC and agreement to extend the period within which to comply is reached.

Comment

'Digital links' are essentially HMRC's means of reducing the risk of errors by limiting human intervention in the accounting journey. 'Cut and paste' for example, is seen as an area where there is greater risk of error than are formulae pulling data from one spreadsheet into another.

We have an extensive team of VAT and systems specialists who can assist with evaluation of your IT and accounting procedures, process mapping and conducting a gap analysis to highlight areas that may not comply with the new rules.

Contacts

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

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

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