Edition 4
August 2020

V@

Welcome to the August 2020 edition of RPC's V@, an update on developments in the VAT world that may impact your business.

News

- **The Value Added Tax (Zero Rate for Personal Protective Equipment) (Extension) (Coronavirus) Order 2020** has been made, which extends the expiry date for the zero-rating of personal protective equipment, provided for in Group 20, Schedule 8, Value Added Tax Act 1994 (VATA 1994), from 31 July 2020 until 31 October 2020.

- HMRC has published **guidance** and a **policy paper** in relation to the temporarily reduced rate of VAT on supplies relating to hospitality, accommodation, or admission to certain attractions, as well as specific **guidance** in relation to the attractions which are eligible for the temporary reduced rate.

- HMRC has published a **policy paper** on changes to the VAT treatment of overseas goods sold to customers in Great Britain from 1 January 2021. This follows the publication, on 13 July 2020, of The Border Operating Model, which outlines the processes for moving goods between Great Britain and the EU from 1 January 2021, including processes to be introduced in April 2021 and July 2021.

- The Charity Tax Group has published a **letter from HMRC**, dated 20 July 2020, in which HMRC has confirmed that five categories of digital advertising are not caught by Note 10A, Group 15, Schedule 8, to the VATA 1994, and are therefore eligible for zero-rating.

- HMRC has published **guidance** in relation to when, from 1 January 2021, UK VAT-registered businesses can, or need to, account for import VAT on their VAT return (also called postponed VAT accounting).

- HMRC has published **Revenue and Customs Brief 11 (2020)**, which provides guidance on the appropriate VAT and Stamp Duty Land Tax treatment of the most common lease variations in relation to commercial properties (which have become more frequent as a result of the COVID-19 pandemic).

- The Official Journal has published three measures **(Council Regulation (EU) 2020/1108, Council Decision (EU) 2020/1109**, and **Council Implementing Regulation (EU) 2020/1112)**, all of which were adopted on 20 July 2020, which delay the implementation of the EU's VAT e-commerce package by six months (until 1 July 2021), in response to the COVID-19 pandemic.

- HMRC has updated its **VAT Notice 701/10** on the zero-rating of books and printed matter, to include a new section 9 which provides guidance on the zero-rating of supplies of certain e-publications, which has been effective since 1 May 2020.

Case reports

Northumbria Healthcare NHS Foundation Trust – Court of Appeal confirms that NHS Trust was entitled to a refund under the contracted out services regime in respect of the provision of cars to its employees

In *HMRC v Northumbria Healthcare NHS Foundation Trust* [2020] EWCA Civ 874, the Court of Appeal upheld the decision of the Upper Tribunal (UT) that the Northumbria Healthcare NHS Trust (the Trust) was entitled to a refund, under section 41(3), VATA 1994, of the VAT it incurred when it acquired cars which it provided to its employees as part of a salary sacrifice scheme.

The key question was whether the acquisition of the cars by the Trust, for the purpose of leasing them to its own employees, was for the purpose "of any business carried on" by the Trust, in which case the claim to a refund would fail. It was common ground that in the domestic legislation "business" corresponds to "economic activity" in Council Directive 2006/112/EC (the Principal VAT Directive).

Article 2 of the Value Added Tax (Treatment of Transactions) Order 1992 deemed the provision of cars by the Trust to its employees not to be a supply for VAT purposes. The Court agreed with the UT that the provision of the cars could not therefore be an economic activity within the meaning of Article 9 of the Principal VAT Directive, because economic activity requires a supply of goods or services. The Trust was therefore entitled to a VAT refund under section 41(3).

Why it matters: This judgment is good news for NHS Trusts which, the Court of Appeal has confirmed, are entitled, under the contracted out services regime, to a refund of the VAT they incur in acquiring items provided to their employees as part of a salary sacrifice scheme. Any NHS Trusts who think they may be entitled to a refund of VAT, should submit their claim to HMRC as soon as possible, if they have not already done so.

The judgment can be viewed **here**.

Milton Keynes Hospitals NHS Foundation Trust - Upper Tribunal decides that HMRC are entitled to assess under section 73(2) VATA 1994 in respect of VAT overclaimed by an NHS Trust under the contracted out services system

In *Milton Keynes Hospitals NHS Foundation Trust v HMRC* [2020] UKUT 231 (TCC), the UT upheld the decision of the First-tier Tribunal (FTT) that HMRC had the power to recover an amount of VAT that, according to HMRC, had been overclaimed by the Milton Keynes Hospitals NHS Foundation Trust (the Trust) under section 41, VATA 1994, in respect of expenditure on IT equipment, by way of an assessment under section 73, VATA 1994.

The issue before the UT was whether section 73(2) permits an assessment of an amount overclaimed under section 41(3). The Trust's main submission was that section 73(2) only permits HMRC to assess a person who is a taxable person for VAT purposes. The Trust argued that, because the amount claimed by the Trust under section 43(1) was not VAT incurred for the purpose of a business, and was not input tax, the Trust's claim had not been made as a taxable person, so it could not be the subject of an assessment under section 73(2). In rejecting these arguments, the UT agreed with the FTT that "*the words of the statute are clear and unambiguous, and no amount of contextualisation would warrant the rewriting of those plain words*".

Why it matters: By confirming that HMRC may issue assessments under section 73, VATA 1994, for overclaims under section 41, VATA 1994, the UT has confirmed that the recipients of such assessments have a right to appeal to the FTT under section 83, VATA 1994. This is significant, as HMRC have previously denied, since the introduction of the contracted out services regime, that taxpayers have a right of appeal to the FTT against these assessments.

The decision can be viewed **here**.

Europcar Group UK Ltd - First-tier Tribunal finds that the letting of a car with a child car seat by a car rental company constitutes two separate supplies

In *Europcar Group UK Ltd v HMRC* [2020] UKFTT 249 (TC), the FTT agreed with Europcar that the letting of a car with a child car seat constituted, for VAT purposes, a separate supply of the car (standard rated) and the car seat (reduced rate of 5%).

In reaching its decision, the FTT considered the relevant case law of the Court of Justice of the European Union, which was summarised by the UT in *Honourable Society of Middle Temple v HMRC* [2013] UKUT 0250 (TCC). The FTT concluded that the supplies of the car and car seat were economically distinct. Customers hiring both a car and a car seat (Car Seat Customers) went through a booking process that clearly indicated that hiring a car seat was an optional extra for which an additional fee had to be paid, and the costs of car hire and car seat hire were separately set out at each stage. Car Seat Customers also had a genuine economic choice as

to whether to hire a car seat or not. The FTT therefore concluded that the supplies were to be regarded as distinct and independent.

Why it matters: This was a well-reasoned decision by the FTT, which applied the relevant case law principles to the facts of the case. Other car rental companies in a similar position may wish to consider making voluntary disclosure claims seeking repayment of overpaid output tax in respect of supplies of child seats, which they previously treated as standard rated.

The decision can be viewed **here**.

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