Edition 6
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V@

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

News

- HMRC has published **Revenue and Customs Brief 14 (2020): changes to the methods used by opticians and sellers of hearing aids to account for VAT on their supplies.** The brief explains simplifications to the processes used by opticians and dispensers of hearing aids to account for VAT on their supplies, which took effect from 1 October 2020.

- HMRC has published the **VAT reverse charge technical guide,** which provides technical information about the VAT reverse charge for those who buy or sell services in the Construction Industry Scheme. HMRC has also published practical guidance for **suppliers** and **customers**.

- HMRC has published **guidance on the deferral of VAT payments due to coronavirus (COVID-19)**. This follows the announcement of the Chancellor on 24 September 2020, that businesses which deferred VAT due from 20 March to 30 June 2020, will now have the option to pay in smaller payments over a longer period.

- HMRC has updated its policy paper **Changes to VAT treatment of overseas goods sold to customers from 1 January 2021**. The paper has been updated to include information about transactions before 1 January 2021, who should register for UK VAT and the requirements for online marketplaces.

- The Official Journal of the European Union has published **Commission Implementing Regulation (EU) 2020/1318**, which extends the application dates of Implementing Regulations (EU) 2020/21 and (EU) No 2020/194 by six months to 1 July 2021, in response to the COVID-19 pandemic. Regulation (EU) 2020/1318 entered into force on 13 October 2020.

- HMRC has published **updates** to guidance in its **VAT Taxable Person Manual** in relation to employment bureaux, in particular to reflect the decisions in *Adecco UK Ltd and others v HMRC* [2017] UKUT 113 (TCC) and *Adecco UK Ltd and others v HMRC* [2018] EWCA Civ 1794.

Case reports

United Biscuits – CJEU confirms that pension fund management services are not exempt from VAT

In *United Biscuits (Pension Trustees) Limited v HMRC* (Case C-235/19), the CJEU held that investment fund management services supplied for an occupational pension scheme, which did not provide any indemnity from risk (the **pension fund management services**), could not be classified as 'insurance transactions' within the meaning of Article 135(1)(a) of Council Directive 2006/112/EC (the **VAT Directive**), and therefore did not fall within the VAT exemption provided in that provision in favour of such transactions (the **insurance exemption**).

The CJEU concluded that the terms used to specify the exemptions covered by Article 135(1) of the VAT Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person acting as such. In the view of the CJEU, the insurance exemption is justified by the difficulty of determining the correct amount of VAT for insurance premiums relating to the coverage of risk, and therefore the pension fund management services could not benefit from the exemption.

Why it matters: This is the latest in a long series of cases which consider the VAT treatment of pension fund management services. The CJEU followed the Advocate General, who opined that the pension fund management services did not fall within the insurance exemption. The judgment will disappoint those pension funds who hoped to obtain repayments of VAT in respect of historic fund management services provided to them by non-insurers, especially given that, until 1 April 2019, HMRC allowed pension fund management services provided by insurers to be treated as VAT exempt.

The judgment can be viewed **here**.

DCM – Court of Session decides that HMRC may amend input tax repayment claims

In *DCM (Optical Holdings) Ltd v HMRC* [2020] CSIH 60, the Court of Session upheld in part a decision of the Upper Tribunal (**UT**) in respect of an appeal by DCM (Optical Holdings) Ltd (**DCM**), whose business consisted mainly of the sale of spectacles.

DCM appealed to the First-tier Tribunal (**FTT**) in respect of various HMRC assessments and decisions. All of those appeals were dismissed by the FTT.

The FTT (i) determined that HMRC had been entitled to reduce sums which DCM had claimed as input tax in the relevant repayment returns and to "amend" those returns accordingly (the **amendment issue**), (ii) accepted HMRC's allocation of discounts on DCM's charges between chargeable supplies and exempt supplies (the **discounts issue**), and (iii) determined that the assessments were not time-barred (the **time bar issue**). DCM appealed to the UT, which dismissed the appeal on the amendment issue and the discounts issue but allowed the appeal on the time bar issue. DCM appealed and HMRC cross-appealed to the Court of Session.

The Court of Session dismissed DCM's appeal on the amendment issue and the discounts issue. The Court held that (i) HMRC duly exercised its power to adjudicate upon the input tax claims in the returns, and (ii) evaluation of the evidence was a matter for the FTT, which was entitled to accept HMRC's approach to the discounts. The Court allowed HMRC's appeal in respect of the time bar issue, holding that the UT erred in law in making findings in relation to this issue which were at odds with the FTT's findings.

Why it matters: DCM argued that HMRC must give effect to a decision not to accept an input tax claim either by making an assessment in terms of section 73, Value Added Tax Act 1994, or by making a direction under regulation 35, Value Added Tax Regulations 1995. The Court's decision that HMRC may amend repayment returns without recourse to these provisions reflects the Court's purposive approach to interpreting the relevant legislation.

The judgment can be viewed **here**.

Concept Multi-Car – FTT finds that taxpayer had no reasonable excuse for late payment of VAT

In *Concept Multi-Car Ltd v HMRC* [2020] UKFTT 344 (TC), the FTT dismissed the appeal of Concept Multi-Car Ltd (**CMC**) and upheld CMC's VAT default surcharge, confirming that CMC did not have a reasonable excuse for late payment of VAT.

The central question in the appeal was whether CMC had a reasonable excuse for the late payment of VAT. In the absence of any statutory definition of a "reasonable excuse", the FTT applied the principles enunciated in *Christine Perrin v HMRC* [2018] UKUT 156 (TCC).

CMC contended that it had a reasonable excuse for the late payment because it thought it had completed a new direct debit instruction, which it believed should have been implemented for the 04/19 quarter.

The FTT concluded that there was no evidence that CMC had completed a direct debit instruction and it had not proved, on the balance of probabilities, that it had done so. For example, not only was CMC aware of the fact that the direct debit had not been set up following the surcharge received for the 01/19 quarter, CMC was also provided with a link to the online form to set up a direct debit in a letter received from HMRC in January 2019. Further, HMRC's guidance on its website stated that taxpayers can use their VAT online account to set up a direct debit and

that the direct debit must be set up at least three working days before submitting a VAT return online, otherwise the payment will not be taken from the relevant bank account in time. Notwithstanding this, CMC took no further action until it completed its 04/19 return at the end of May 2019.

Even if CMC had made a direct debit request (which the FTT concluded it had not done) the FTT commented that had the company double checked that the direct debit request had been implemented before the due date for payment, it would have discovered it was too late for the direct debit to be actioned for that quarter, but it would still have had sufficient time to make an in-time payment by other means and so would have avoided the surcharge.

The FTT therefore concluded that CMC did not have a reasonable excuse for the late payment and dismissed the appeal.

Why it matters: This decision is a reminder that there is no statutory definition of "reasonable excuse" and as each case will turn on its particular facts, it is important to ensure that sufficient evidence is available before the FTT to establish the facts relied upon by the appellant taxpayer in support of its appeal.

The decision can be viewed **here**.

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