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V@

Welcome to the February 2021 edition of RPC's V@, an update which provides analysis and news from the VAT world relevant to your business.

News

- HMRC has published **guidance** on how UK businesses registered for VAT that are claiming a VAT refund in another country can ask HMRC for a certificate of status to confirm they are trading in the UK.

- HMRC has published a **consultation** on VAT and value shifting, which seeks views on a proposed revision of the rules for apportioning the consideration between supplies with mixed liabilities in a single transaction. The consultation will be of particular interest to businesses that sell goods or services for a reduced price as part of a package or 'bundle'. The consultation closes on 30 March 2021.

- HMRC has published a policy paper in which it confirms that after receiving representations from businesses and their representatives, it has decided to apply the updated VAT treatment set out in **Revenue and Customs Brief 12 (2020): VAT early termination fees and compensation payments** from an unspecified future date. HMRC has confirmed that it will shortly issue revised guidance and a new Revenue and Customs brief to explain what businesses need to do, which will include guidance on what to do if they have already changed how they treat such payments because of this Brief.

- HMRC has updated **Energy-saving materials and heating equipment (VAT Notice 708/6)**, which provides guidance on how to account for VAT for contractors and subcontractors installing energy-saving materials and grant-funded heating equipment. Section 2.17 of the notice has been amended with updated information about air source heat pumps.

Case reports

Healthspan - Tribunal applies *KravVet* in deciding that goods fell within Article 33 of the Principal VAT Directive

In *Healthspan Ltd (2) v HMRC* [2020] UKFTT 509 (TC), the First-tier Tribunal (**FTT**) considered whether goods ordered by internet and by post, which were delivered by post (the **relevant goods**), were within Article 32 or Article 33 of the Principal VAT Directive (the **PVD**), in the light of the findings of fact set out in an earlier decision of the FTT in this case, and the guidance provided by the judgment of the Court of Justice of the European Union (**CJEU**) in *KrakVet Marek Batko sp.k. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (Case C 276/18) (*KrakVet*).

Healthspan Ltd (**Healthspan**), a company registered in Guernsey, sold non-prescription health products to retail customers, who placed orders by telephone, by internet or by post. Between 1 April 2012 and 31 January 2016, the overwhelming majority of Healthspan's products were despatched from a warehouse in the Netherlands and delivered to customers in the UK. Healthspan appealed to the FTT against: (1) a decision of HMRC that during the relevant period the goods had been delivered "by or on behalf of the supplier" and so came within Article 33 of the PVD, implemented in the UK by section 7(4), Value Added Tax Act 1994 (**VATA 1994**), the goods had therefore been supplied in the UK and therefore to register Healthspan for VAT retrospectively, with effect from 1 April 2012; and (2) a VAT assessment issued by HMRC on this basis. Healthspan appealed to the FTT on the basis that its customers had contracted with a separate company for delivery of the goods and as a result Article 32 of the PVD applied.

The FTT had made a reference to the CJEU regarding the relevant goods, which was stayed behind *KrakVet*. Following the CJEU's judgment in *KrakVet*, the FTT withdrew the reference. Applying the guidance in *KrakVet* to the facts of the case as determined in the FTT's earlier decision, the FTT concluded that the relevant goods were within Article 33, and therefore dismissed the remaining part of Healthspan's appeal.

Why it matters: This decision will be disappointing for the numerous other taxpayers which utilised such arrangements to minimise their VAT liability. However, following the UK's exit from the EU, the distance selling rules no longer apply in the UK and therefore the decision will be of limited relevance going forward.

The decision can be viewed **here**.

News Corp - Court of Appeal decides that digital news services were not zero rated

In *HMRC v News Corp UK & Ireland Ltd* [2021] EWCA Civ 91, the Court of Appeal considered whether, in the period from September 2010 to December 2016 (the **relevant period**), digital editions of certain newspaper titles (the **digital news services**) published by News Corp UK & Ireland Ltd (**News UK**) were zero rated for VAT purposes.

During the relevant period, supplies of printed newspapers were zero-rated for VAT purposes, pursuant to section 30 and Item 2, Group 3 of Schedule 8 to VATA 1994. Zero-rating for printed newspapers has since been extended to all electronic newspaper publications with effect from 1 May 2020. The Court considered whether the word "newspapers" could be properly interpreted for the relevant period to apply to the digital news services. The FTT had held that the digital news services were not "newspapers" for VAT purposes. The Upper Tribunal (**UT**) allowed News UK's appeal and HMRC appealed to the Court of Appeal.

The Court of Appeal allowed HMRC's appeal. The Court decided: (i) that the word “newspapers” in Item 2 Group 3, when read in its full context, could not be given the expansive interpretation for which News UK contended; and (ii) the principle of fiscal neutrality could not have the effect of extending the scope of the exemption from VAT beyond its expressed limits. The digital news services therefore were not zero-rated in the claim periods.

Why it matters: Although the appeal was confined to "newspapers", the logic of the reasoning may also extend to other items in Group 3, and elsewhere, in particular to "books", "journals" and "periodicals". Given the extension of zero-rating to most electronically supplied products of this kind with effect from 1 May 2020, the judgment will be of limited significance to future supplies. However, it is likely to impact on many historic claims.

The judgment can be viewed **here**.

Conservatory Roofing Systems - Tribunal decides that a company's supply of an insulated conservatory roof system did not qualify for a reduced rate of VAT

In *Conservatory Roofing Systems Ltd v HMRC* [2020] UKFTT 506 (TC), the FTT held that the supply of an insulated conservatory roofing system was a roof conversion and therefore did not qualify for the reduced rate of VAT but was instead standard rated for VAT purposes.

The key issue for the FTT to determine was whether the work completed by Conservatory Roofing Systems Ltd (**CRS**) should be classified as a ‘roof replacement’ and so subject to the standard rate of 20% VAT, or an ‘installation of insulation for roofs’, within the meaning of Note 1(a) of Group 2 to Schedule 7A to VATA 1994, and therefore subject to the reduced rate of 5% VAT. The FTT dismissed CRS' appeal, concluding that CRS' supply was not of ‘installation of insulation for roofs’ and the supply could not therefore be classified as reduced-rated for VAT purposes.

In coming to its decision, the FTT noted that CRS' roofing system was almost identical to the supplies made in the case of *HMRC v Wetheralds Construction Ltd* [2018] UKUT 0173 (TCC), in which the UT concluded that the supplies made were standard-rated for VAT purposes. The FTT commented that the supplies made by CRS extended far beyond installing insulation to a roof, noting that the work was "*materially, the construction of an entirely new roofing system*". Applying the test in the CJEU case of *Mesto Zamberk v Finanani feciltelstvi v Hradci Kralove* [2014] STC 1703 (Case C-18/12), the FTT considered that how a typical customer may view

the supply was of particular importance. CRS' marketing material demonstrated that the supply was of a roofing system, to which the insulation was an incidental part. The FTT therefore agreed with HMRC that a typical consumer would, on the basis of both CRS' marketing material and the nature of the finished product, consider that they were receiving a new roofing system rather than just roofing insulation.

Why it matters: This case follows similar findings in *Greenspace (UK) Ltd* where the FTT found that the supply and installation of conservatory roof insulation in the form of insulated roof panels were a standard-rated supply for VAT purposes.

The decision can be viewed **here**.

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Adam Craggs
Partner
+44 20 3060 6421

Rebekka Sandwell
Associate
+44 20 3060 6660