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Dear {First Name}

Welcome to the April 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 **Revenue and Customs Brief 3 (2021): VAT liability of digital publications – update on litigation in News Corp and Ireland Ltd.** The brief replaces Revenue and Customs Brief 1 (2020) and provides an update on the VAT treatment of supplies of digital newspapers and other digital publications before 1 May 2020, following the Court of Appeal's decision in *HMRC v News Corp UK & Ireland Ltd* [2021] EWCA Civ 91.

- HMRC has updated its guidance **Changes to notifying an option to tax land and buildings during coronavirus (COVID-19)**. The guidance temporarily extends the time limit to notify HMRC of a decision to opt to tax land and buildings from 30 to 90 days, from the date the decision to opt was made. The updated guidance extends the effect of this change so that it applies to decisions made between 15 February 2020 and 30 June 2021.

- HMRC has published **Revenue and Customs Brief 4 (2021): partially exempt VAT registered businesses affected by coronavirus (COVID-19)**. The brief provides information on an accelerated process by which VAT registered businesses can request temporary alterations to their partial exemption methods (including combined methods) to reflect changes to their business practices due to the coronavirus pandemic. The brief is relevant to partially exempt business whose trading activities have been affected by coronavirus, as a result of which their existing partial exemption method does not provide a fair and reasonable result.

- HMRC has published **VAT partial exemption and Capital Goods Scheme - summary of responses**, subsequent to its July 2019 request for evidence regarding the simplification of the VAT partial exemption and the Capital Goods Scheme regimes. The request was made following the recommendations of the report by the Office of Tax Simplification. The summary of responses also details certain interim changes and proposed next steps.

Case reports

Prudential Assurance Company – FTT applies VAT group registration and time of supply rules in deciding that supplies were outside the scope of VAT

In *The Prudential Assurance Company Ltd v HMRC* [2021] UKFTT 0050 (TC), the Prudential Assurance Company (**Prudential**) was the representative member of a VAT group. In 2002, it entered into an investment management agreement (the **Agreement**) with another member of the same VAT group, Silverfleet Capital Ltd (**Silverfleet**), under which the latter received consideration for investment management services which comprised both a management fee and a performance fee. In 2007, Silverfleet was bought out and as a result ceased to be a member of Prudential's VAT group. Silverfleet ceased to provide investment management services to Prudential and the Agreement was varied such that Silverfleet no longer had an entitlement to management fees, only performance fees. The benchmark rate of return to trigger the performance fee was reached during 2014 and 2015, and Silverfleet invoiced Prudential for its fees.

Prudential argued that, under section 43(1), Value Added Tax Act 1994 (**VATA 1994**), the performance fees were outside the scope of VAT

because the services in respect of which the fees were paid were provided while the parties were members of the same VAT group. HMRC's position was that, under Regulation 90, Value Added Tax Regulations 1995 (SI 1995/2518), the relevant tax point was when the invoices were issued, which was after Silverfleet had left the VAT group. HMRC therefore argued that the fees were within the scope of VAT. Prudential appealed to the First-tier Tribunal (**FTT**).

The appeal was allowed. The FTT accepted that the services fell under Regulation 90 and would therefore be treated as "separately and successively supplied at the earlier of invoice or payment". However, the FTT noted that at the time when the parties were members of the same VAT group, Silverfleet's services were treated as being carried on by Prudential and therefore Silverfleet made no supplies. The FTT relied on the Court of Appeal decision in *BJ Rice* [1996] STC 581. In *BJ Rice*, the appellant had made supplies within equivalent "time of supply" rules prior to registering for VAT and was paid after becoming VAT registered. The Court considered that the services had not been provided by a taxable person at the time when they were supplied, and therefore no charge to tax could arise.

Why it matters: The decision provides helpful clarification regarding the interaction between the VAT group registration rules and the time of supply rules.

The decision can be viewed **here.**

Lilias Graham Trust – UT decides that accommodation forming part of a single supply of welfare services is not excluded from exemption

In *The Lilias Graham Trust v HMRC* [2021] UKUT 36 (TCC), the Lilias Graham Trust (the **Trust**) was a charity which provided a residential assessment centre where it assessed the parenting capacities of those referred to it by a local authority in return for a fee charged to that authority. The FTT had held, contrary to the Trust's case, that its supplies were exempt supplies of “welfare services” under Item 9, Group 7 Schedule 9, VATA 1994, being directly connected to the care or protection of children. The Trust accepted that conclusion and did not seek to appeal it.

Note 7 to Group 7 provides that Item 9 does not include the supply of accommodation, or catering, except where it is "ancillary to the provision of care, treatment or instruction". The FTT rejected the Trust's argument that the accommodation was outside the scope of the exclusion to Note 7. In the FTT's view, the provision of accommodation was ancillary to the provision of care for the purposes of Note 7 and therefore exempt. The Trust appealed this decision to the Upper Tribunal (**UT**).

The appeal was dismissed. After considering the European legal framework of mandatory exemption for certain matters, the UT concluded that the reference to “supply” in Note 7 cannot be interpreted so as to capture a supply which is itself an element in a single supply for VAT purposes. The UT also decided that “ancillary” in Note 7 did not incorporate the definition of ancillary supply used in *Card Protection Plan* (Case C-349/96).

Why it matters: This case will be of significance to those seeking to rely on the Note 7 exclusion to exemption under Item 9 of Group 7, which covers a wide range of welfare services. The UT itself noted that its decision leaves unanswered questions as to the function of Note 7. Although some examples were canvassed of situations where it would serve a clear function, none readily pointed to provision of accommodation or catering caught by Note 6 (i.e. directly connected with care) but then excluded by Note 7.

The decision can be viewed **here**.

Wellcome Trust – CJEU confirms reverse charge applies where a taxable person receives services relating to non-economic activities carried out in a business capacity

In *HMRC v Wellcome Trust Ltd* (Case C-459/19), the Court of Justice of the European Union (**CJEU**) followed the opinion of Advocate General Hogan in holding that the place of supply of services provided by a non-EU supplier to a UK taxable person, for the purposes of its non-economic business activities, was the place where the recipient belonged, confirming that section 7A, VATA 1994, was not contrary to EU law.

Wellcome Trust Ltd (**Wellcome**) was the sole trustee of a charitable trust,

the Wellcome Trust, which made grants for medical research. Wellcome received income from various investments and also had a number of minor activities including sales, catering and rental of properties in respect of which it was registered for VAT. Investment income, which was the source of most of the funding for the grants made, was predominantly from overseas investments in relation to which services were supplied to Wellcome by investment managers established within and outside the EU.

The central issue in the case concerned the interpretation of Article 44, Council Directive 2006/112/EC (**VAT Directive**), in particular, whether the reverse charge mechanism provided for in Article 196, VAT Directive, should be applied to the services provided to Wellcome by non-EU investment managers. Wellcome was a taxable person, but the reverse charge rules provide a carve out for taxable persons not "acting as such". Wellcome argued that it was not acting as a taxable person because the services were in relation to non-economic activities. The CJEU rejected this argument, finding that the carve out for taxable persons not "acting as such" is intended to exclude services for private use, not services for non-economic activities carried on in a business capacity. The investment management fees were business-to-business supplies, Wellcome was therefore a taxable person "acting as such" for the purposes of determining place of supply and the reverse charge was therefore applicable. This was notwithstanding that, in *Wellcome Trust Ltd v CCE* (Case C-155/94), the CJEU held that Wellcome was not a taxable person "acting as such" for the purposes of Article 2(1), VAT Directive, which determines the scope of VAT.

Why it matters: The judgment confirms that businesses that receive services for their non-economic business activities from outside the UK will need to apply the reverse charge provided for in Article 196, VAT Directive, where the place of supply is the UK.

The judgment can be viewed **here**.

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