Edition 3
July 2020

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Welcome to RPC's V@, a monthly update on developments in the VAT world that may impact your business.

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News

Treasury makes the Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Coronavirus) Order 2020 reducing the rate of VAT for supplies in the hospitality and tourism sector

The Treasury has made the Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Coronavirus) Order 2020, which came into force on 15 July 2020.

The Order adds three new groups to Schedule 7A, Value Added Tax Act 1994 (VATA 1994) (charge at reduced rate), thereby extending the reduced rate of VAT (5%) to certain supplies in the hospitality and tourism sector.

The new groups are Group 14 (Course of catering), Group 15 (Holiday accommodation etc) and Group 16 (Shows and certain other attractions).

The Order also reduces some of the appropriate percentages for small businesses using the flat rate scheme. The percentage for "Catering services including restaurants and takeaways" is reduced from 12.5% to 4.5%, the percentage for "Hotel or accommodation" is reduced from 10.5% to 0%, and the percentage for "Pubs" is reduced from 6.5% to 1%. These changes apply to supplies made in the period from 15 July 2020 to 12 January 2021.

The Order can be viewed here.

HMRC extends zero-rating of supplies of personal protective equipment

The Value Added Tax (Zero Rate for Personal Protective Equipment) (Coronavirus) Order 2020, came into force on 1 May 2020 and added a new Group 20 (Personal Protective Equipment (Coronavirus)) to Schedule 8, VATA 1994, thereby extending zero-rating to supplies of equipment to provide protection from infection made in the period from 1 May 2020 to 31 July 2020.

On 3 July 2020, HMRC updated its policy paper "Revenue and Customs Brief 4 (2020): temporary VAT zero rating of personal protective equipment (PPE)" and its policy paper "VAT zero rating for personal protective equipment", to extend the end date for the temporary VAT zero rating from 31 July 2020 to 31 October 2020. The extension was also discussed in a news story published by the Treasury on 3 July 2020.

The policy papers can be viewed here and here and the news story can be viewed here.

HMRC extends application of extension of deadline to notify decision to opt to tax land and buildings

HMRC has updated its guidance, published on 14 May 2020, which temporarily changes the way taxpayers need to notify an option to tax land and buildings during coronavirus.

The guidance extends the time limit to notify HMRC of a decision to opt to

tax land and buildings from 30 days to 90 days from the date the decision was made.

This extended deadline for notification was originally stated to apply to decisions made between 15 February and 31 May 2020. On 27 May 2020, the guidance was updated to confirm that it applied to decisions made between 15 February 2020 and 30 June 2020. The guidance has now been updated again, and the extended deadline now applies to decisions made between 15 February and 31 October 2020.

The guidance can be viewed here.

Case reports

KrakVet - CJEU rules that the place of supply of distance sales between EU member states is the location of the customer where the role of the supplier is predominant in initiating and organising the essential stages of the dispatch or transport of the goods

In *KrakVet Marek Batko sp.k. v Nemzeti Ado- es Vamhivatal Fellebbviteli Igazgatosaga* (Case C-276/18), the Court of Justice of the European Union (CJEU) provided a preliminary ruling in respect of a referral in proceedings between KrakVet Marek Batko sp.k (KrakVet), a Polish company, and the Hungarian tax authority, concerning the payment of VAT on the sale of goods through KrakVet's website to purchasers residing in Hungary.

KrakVet offered on its website the possibility for purchasers in Hungary to conclude a contract with a transport company established in Poland for the purposes of delivering the goods marketed by KrakVet, without KrakVet being a party to that contract. Where necessary, the goods were delivered by that transport company to the warehouses of two courier companies established in Hungary, which then distributed them to Hungarian customers.

The referring court asked the CJEU to rule on a number of questions, including whether Article 33 of the Principal VAT Directive 2006/112/EC must be interpreted as meaning that, when goods sold by a supplier established in one Member State to purchasers residing in another Member State are delivered to those purchasers by a company recommended by that supplier, but with which the purchasers are free to enter into a contract for the purpose of that delivery, those goods must be regarded as dispatched or transported 'by or on behalf of the supplier'. If the transactions at issue fell within the scope of Article 33, the place of supply would be deemed to be in Hungary, which was where the goods were located when dispatch or transport to the purchaser ended.

The CJEU ruled that a supply of goods falls within the scope of Article 33 where the role of the supplier is predominant in terms of initiating and organising the essential stages of the dispatch, or transport of the goods. This was for the referring court to determine, taking account of all the facts of the dispute in the main proceedings.

The judgment can be viewed here.

BlackRock Investment Management (UK) Ltd - CJEU rules that VAT exemption for the management of special investment funds does not apply to a single supply of services used to manage both special investment funds and other funds

In *BlackRock Investment Management (UK) Ltd v HMRC* (Case C-231/19), the CJEU provided a preliminary ruling in respect of a referral from the Upper Tribunal in proceedings concerning HMRC's refusal to grant BlackRock Investment Management (UK) Ltd the benefit of the exemption from VAT of the management of special investment funds (SIFs) provided for in Article 135(1)(g) of the Principal VAT Directive 2006/112/EC (the Fund Management Exemption).

The Upper Tribunal asked the CJEU to rule on whether Article 135(1)(g) must be interpreted as meaning that a single supply of management services, provided by a software platform belonging to a third-party supplier for the benefit of a fund management company, which manages both SIFs and other funds, comes within the Fund Management Exemption and if so, what are the detailed rules for the application of that exemption.

The CJEU applied the general rule that a single supply must be the subject of a single tax treatment. Subjecting the various elements comprising a single supply to the various rates of VAT applicable to those elements would mean artificially splitting that supply and risk distorting the

functioning of the VAT system.

The CJEU was also of the view that the single tax treatment of the supply could not be determined according to the nature of the majority of the funds managed, as the service at issue was designed for the purpose of managing investments of various kinds and therefore cannot be regarded as specifically for the management of SIFs.

The CJEU therefore ruled that the Fund Management Exemption did not apply.

The judgment can be viewed here.

Mandarin Consulting Limited - FTT finds that usual residence does not include temporary residence for a specific and definite period

In *Mandarin Consulting Ltd v HMRC* [2020] UKFTT 228 (TC), the taxpayer appealed against two assessments for under-declared output tax in respect of supplies of career coaching and support to students of Chinese origin (the supplies).

The First-tier Tribunal (FTT) agreed with the taxpayer that the supplies constituted consultancy services within Article 59 of the Principal VAT Directive 2006/112/EC (rather than supplies of educational activities within Article 54 of the Principal VAT Directive) and therefore the place of supply was where the customer is established, has his permanent address or usually resides. Article 13 of Council Implementing Regulation 282/2011/EU (the Implementing Regulation) provides that a natural person usually resides in the place where they usually live as a result of personal and occupational ties.

The FTT decided that, prior to July 2016, when the taxpayer contracted directly with the students, it made the supplies to the students, rather than their parents, even where it was paid directly or indirectly by the parents. From July 2016, in cases where the taxpayer contracted directly with the students' parents, it made the supplies to the parents, regardless of how payment was made.

It was common ground that the students' parents usually resided outside the UK, and therefore the taxpayer's appeal was allowed in respect of periods from July 2016, as the supplies were outside the scope of UK VAT.

The FTT dismissed the taxpayer's appeal in respect of the period prior to July 2016, because the taxpayer had failed to establish the usual residence of the candidates in the manner required by Article 23 of the Implementing Regulation. The FTT held that usual residence does not include temporary residence for a specific and definite period of time, such as attendance at a university in order to complete a degree course.

The decision can be viewed here.

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