

VAT NEWS

December 2018



Whilst HMRC are saving the really big presents (The new Customs Declaration Service, Making Tax Digital) until 2019, there is still plenty of yuletide joy to be had from recent news and cases.

Brexit

Whilst the Government has made it clear that it intends to have a deal in place by 29 March, there have been nine statutory instruments (SIs) published to ensure that the UK replicates the Union Customs Code within the UK. In most cases these SIs will only apply if there is a no-deal Brexit. The fact that one of the matters covered is the provision of toilets for HMRC officials at ports must be some relief to the Department.

If you trade in goods with EU businesses, you should look to apply for an EORI number now to enable trade to continue should there be a "no-deal" Brexit.

No windfall

The taxpayer erred in making zero-rated supplies of sub-contract work to a main contractor. Whilst the building in question was a relevant charitable purpose ("RCP") building, the zero-rating only applies to supplies made to the entity using the building for RCP, i.e. those of the main contractor. When HMRC identified the error, the main contractor had gone into liquidation so the VAT due on the supplies could not be reclaimed by the main contractor, nor paid to the sub-contractor. Therefore, the sub-contractor argued the raising of an assessment by HMRC would create an unjust enrichment windfall for HMRC as there would be no corresponding claim by the recipient of the supply. The Upper Tribunal ruled that this was not the case, and said that the initial error could not be fixed by a claim for fiscal neutrality.

Whilst the views of the Tribunal may appear oblique, the case highlights the need to ensure that the right VAT liability is applied at the time of supply.



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ADR – Another Dead-end Route?

The taxpayer was a charity with a number of “supporter schemes”. In 2013 it entered into Alternative Dispute Resolution (“ADR”), meeting with HMRC to agree the VAT treatment of some of the schemes.

A resolution was reached, but the charity went to the Tribunal to contest HMRC’s treatment of schemes prior to the ADR deal. Upon reaching their decision the Tribunal noted that the ADR agreement appeared to be wrong in law. HMRC issued a further assessment on what they viewed to be the correct treatment of the post-ADR income. The charity appealed saying that it had reached an agreement with HMRC. The Tribunal held that the agreement was *ultra vires* and therefore the ADR agreement was void and HMRC were correct to assess based on the law.

This is not the end of the matter as there is to be a judicial review based on legitimate expectation, but it isn’t good PR for the ADR process when a settlement agreed with HMRC is then ignored by the same Department.

Making Tax Digital (MTD)

There’s enough misunderstanding and misinformation about MTD for VAT to fill several VAT newsletters, and despite attempts to postpone its introduction, it seems that MTD will go live for most VAT registered businesses from 1 April 2019.

If you are unsure if you are MTD compliant or if you need to be, please get in touch with your usual Rickard Luckin contact, or Ian Marrow, to discuss.

From all of the VAT team, may I wish you happy Christmas and a peaceful and prosperous New Year.

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