UK VAT Update

By Lyn Hagan

2015 has seen the implementation of a number of legislative changes to the operation of VAT. In this Article, the author focuses on the key changes and highlights some of the more interesting cases decided so far this year.

The fundamental changes to the place of supply rules in relation to services have been phased in over recent years. The change in the place of supply rules for VAT on telecommunications, broadcasting and electronic services have now been implemented with effect from 1 January 2015.

The place of supply of digital services to non-business customers has now moved to where the customer belongs. The definition of digital services is ever evolving but in addition to broadcasting and telecommunications includes e-services which covers video on demand, downloaded applications, music downloads, gaming, e-books, software and on-line auctions.

The place of supply of digital services to business customers has not changed. These new place of supply rules for digital services apply only to supplies made to private individuals and to organisations that are not in business, for example, certain charities and public bodies. Accordingly establishing a customer's status will be required along with determination of their relevant location. A number of commercial considerations also arise including pricing, accounting and compliance.

As we move increasingly into the digital age, the European Commission President has announced plans to create a digital single market in relation to digital goods and services in Europe. This is proposed with the intention of simplifying the tax rules to reduce the burden of cross-border VAT, alongside other reforms.

VAT Moss

The VAT Mini One Stop Shop (VAT MOSS) has been introduced as a response to the potentially extensive administrative burden of multiple VAT registrations resulting from the above change in the place of supply rules for digital services supplied to non-business customers. Previously such services were treated as supplied where the supplier was located and as this has now been reversed completely, registration would be required in every EU country where customers are based.

Under MOSS, both EU and non-EU suppliers have the option of registering in one EU country only and accounting for any VAT due to any other EU countries through a single MOSS return. HMRC have published a useful flowchart to assist businesses and have updated it recently to provide more clarity. This is available at:-

https://www.gov.uk/government/publications/vat-supplying-digital-services-to-private-consumers

Prompt Payment Discount

Historically, suppliers accounted for VAT due on the discounted price, even if the customer did not take advantage of the prompt payment discount being offered and ultimately paid the full price. Customers could only recover as input VAT the amount of VAT stated on the invoice.

For all supplies made since 1 April 2015, Paragraph 4, Schedule 6, VATA 1994 as revised now states that suppliers must account for VAT on the amount they actually receive and the customers may

recover the amount of VAT they actually pay to the supplier. Revenue & Customs Brief 49(2014) outlines guidance on invoicing.

These new rules do not affect the VAT treatment of rebates or retrospective discounts calculated on the volume of transactions for example. Where they do apply, invoicing and accounting systems require review.

AWRS

As HMRC tightens its control of fraud prevention, the latest move is the proposal for the introduction of an Alcohol Wholesaler Registration Scheme (AWRS), with registration required between 1 October 2015 and 31 December 2015. Following this registration process, HMRC will assess whether the business is 'fit and proper' to wholesale alcohol and it is additionally proposed that it will be an offence for any retailer to purchase alcohol from an unregistered wholesaler from April 2017.

Case Law Update

Whilst numerous cases before the Tribunal continue to be in relation to Default Surcharges with many being dismissed, there have been some interesting cases in recent months which are summarised below:-

Caravan Verandas

The recent decision at the Upper Tribunal in Colaingrove Limited [2015] UKUT 0002 (TCC) held that where a veranda is sold with a zero rated static caravan then the supply of the veranda is part of a single zero rated supply. This is an interesting case which considered the principles in the Card Protection Plan case and overturned the First Tier Tribunal's decision. HMRC has decided not to appeal and are planning to issue a Revenue & Customs Brief. There is accordingly the potential to make a reclaim for overpaid VAT which will be subject to HMRC's view on unjust enrichment in relation to any claim and the detail of the Revenue & Customs Brief to be issued.

Zero Rated Construction

In HMRC v Astral Construction Limited [2015] UKUT 0021 (TCC), the Upper Tribunal upheld the First Tier Tribunal decision that the construction of a nursing home on the site of and incorporating a redundant church building was a zero rated supply. Often where an existing building is in situ, the construction works will amount to an enlargement or extension to an existing building and zero rating will be denied. In this case, the Tribunal were satisfied that the scale of the change was sufficiently significant to conclude that the resultant nursing home was a new construction and accordingly zero rated. The Astral decision creates an opportunity to review cases where the construction was treated as standard rated and could potentially be zero rated. It will be interesting to see how this area of case law develops further.

Compound Interest Update

Further to my summary of the Littlewoods case in the May 2014 edition, the Court of Appeal decision was issued on 21 May 2015. This was a case where Littlewoods overpaid £204m in VAT between 1973 and 2004 and HMRC repaid the VAT with simple interest in accordance with Section 78 VATA 1994. Littlewoods claimed compound interest was due and are claiming some £1.2bn from HMRC. The recent Court of Appeal decision in Littlewoods Limited and others [2015] EWCA Civ 515 has now upheld the High Court's 2014 decision that Littlewoods has a right to compound interest.

The Court of Appeal concluded that Section 78 VATA 1994 in this case did not give Littlewoods adequate indemnity which is required under EU law. In deciding on the calculation of quantum, it did not accept that the actual use value should in the circumstances of this case be applied to determine the time value of money for the claim. The Court of Appeal concluded that HMRC could not be considered to be an involuntary recipient of the overpaid VAT in this particular case and objective use value applied to the valuation of the time value of overpayments made to HMRC. The Court of Appeal also concluded that interest must run from the date of the overpayment to the date of judgement, as loss of use of the interest itself continued even after the principal sums had been repaid.

HMRC are expected to seek leave to appeal to the Supreme Court, particularly given the significance of the quantum involved and the principles arising in the case. Accordingly, other similar claims by taxpayers are expected to be stayed pending the outcome of any further

appeal by HMRC. Taxpayers should continue to maintain claims and appeals and where appropriate protect their position with new claims and appeals.

Summary

Whilst there was a short hiatus in activity on the VAT front due to the UK general election in March of this year and the only change of significance in the UK 2015 Budget was the announcement on deductions by foreign branches and corresponding changes to the partial exemption rules, activity picked up swiftly again thereafter. The Littlewoods case is one in particular to watch, particularly given the significant points of law of public interest. There were no changes in the VAT rates in the Budget and the Conservative Government have pledged to lock in VAT rates, ensuring there are no VAT rate rises within the next five years and no extension to the current scope of VAT.

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