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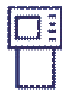
V@

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

We hope you enjoy reading the publication. If you have any feedback on the content or format, please let us know or get in touch with your usual RPC contact.

News



Brief 5 (2020): VAT treatment on fixed odds betting terminals and gaming machines

HMRC has published a policy paper concerning the VAT treatment on fixed odds betting terminals and gaming machines. The brief explains HMRC's position after the joint decision of the Upper Tribunal (UT) on 15 April 2020 in *The Rank Group Ltd* UT/2018/0149 and *Done Brothers (Cash Betting) Ltd (and others)* UT/2018/0150.

The brief clarifies how businesses with appeals related to this joint decision can reclaim overpaid VAT.

The brief is relevant to businesses with appeals which claim that HMRC's treatment of their gaming income as standard rated is a breach of fiscal neutrality.

To progress a claim, the requested information should be submitted to: gaming.machinetype3appeal@hmrc.gov.uk.

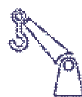
Brief 5 can be viewed here.

Brief 6 (2020): VAT treatment of property search fees charged by solicitors and conveyancers

HMRC has published a policy paper announcing the withdrawal of the postal concession in relation to the VAT treatment of property search fees charged by conveyancers and solicitors.

The postal concession entitles solicitors and conveyancers not to charge VAT on fees for property searches conducted by post. This concession will be formally withdrawn on 1 December 2020 to ensure that the VAT treatment of property searches is correct. HMRC is of the view that the current concession has no basis in law and does not align with HMRC's policy on the VAT treatment of electronic searches.

Brief 6 can be viewed here.



Brief 7 (2020): domestic reverse charge VAT for construction services - delay in implementation

HMRC has published a policy paper delaying the implementation of the domestic reverse charge for construction services. A domestic reverse charge means that, instead of the UK supplier, the UK customer who receives supplies of construction services must account for the VAT due on these supplies on their VAT return.

The brief confirms that the introduction of the domestic reverse charge for construction services will be delayed due to the impact of COVID-19 on the construction industry. Originally due to be implemented on 1 October 2020, the new domestic reverse charge will now be introduced 5 months later, on 1 March 2021.

There will also be an amendment to the original legislation to make it a requirement that for businesses to be excluded from the reverse charge

because they are end users or intermediary suppliers, they must inform their sub-contractors in writing that they are end users or intermediary suppliers.

Brief 7 can be viewed here.

Case reports

United Biscuits (Pension Trustees) - Advocate General opines that pension fund management services by non-insurers are not exempt from VAT

In *United Biscuits (Pension Trustees) Limited and Another v HMRC* Case C-235/19, trustees of a pension scheme that received services from various investment managers, including non-insurers, sought recovery of historic VAT paid on services provided by the non-insurers, claiming these should have been exempt from VAT. HMRC treated supplies of pension fund management as exempt, but only where the supplier was authorised to conduct insurance business. The taxpayers argued that the principles of equality and neutrality required such supplies to be treated as exempt, regardless of the need for any authorisation. The Court of Appeal referred the question of whether the investment management services were exempt insurance transactions within Article 135(1)(a) of Council Directive 2006/112/EC (Directive) (and its predecessor provisions), to the Court of Justice of the European Union (CJEU).

In the view of Advocate General Pikamae (AG), the services were not VAT exempt and noted that:

- Although insurance transactions were not defined by the Directive, the exemption must be interpreted in context. An insured protects itself against uncertain risk by payment of a certain (but limited) premium through a contractual relationship. The nature of the relationship, not the status of the parties, determined whether something was an insurance transaction.
- The First Life Assurance Directive (Directive 79/267/EEC) included management of group pension funds within its scope, but this referred to transactions closely linked but ancillary to insurance transactions, rather than the insurance transactions themselves. The Directive was to be interpreted by reference to its general scheme, which would not include management of a group pension fund.
- The objective of the VAT insurance exemption would not be met by extending the exemption to ancillary services.

Although this opinion will disappoint funds that had been charged VAT by non- insurers previously, it will not come as a complete surprise. Some may be more surprised at the length of time that it took HMRC to withdraw the insurance exemption for pension fund management services provided by insurers. Following the CJEU decision in *ATP* (Case C-464/12), pension fund management in respect of defined contribution schemes has been treated as exempt under Schedule 9, Group 5, Value Added Tax Act 1994 (VATA 1994), since April 2019 (and was incorporated in the legislation with effect from 1 April 2020). Thus, this opinion, if adopted by the CJEU, will not impact on defined contribution schemes (although the management of defined benefit schemes will continue to be taxable as they have been since April 2019).

The AG's opinion can be viewed here.

Ampleaward - purchaser using a UK VAT number was not liable for UK acquisition VAT where goods were housed in an overseas warehousing regime

In *Ampleaward Ltd v HMRC* [2020] UKUT 0170 (TCC), the UT has found in favour of the taxpayer, and confirmed that HMRC was not entitled to claim UK acquisition VAT on the purchase of alcohol from a supplier situated in a second EU state, which was then delivered to a tax warehouse in a third EU state.

The taxpayer is a UK VAT registered alcohol wholesaler approved to own excise duty suspended alcoholic goods in tax warehouses in the UK. The taxpayer's EU supplier used the taxpayer's UK VAT registration number in its domestic tax returns so that the transaction was deemed an exempt movement of goods across an EU border. The taxpayer did not account for VAT in the delivery jurisdiction, where the alcohol was housed in a tax warehouse, and from where it was then sold on to end users in a fourth EU

state.

HMRC argued that section 13(2), VATA 1994, which transposes the relevant EU Directive into domestic law, applied as a result of the supplier using the taxpayer's UK VAT registration number in its domestic tax returns and issued assessments accordingly. The taxpayer appealed.

The First-tier Tribunal agreed with HMRC and upheld the assessments. The taxpayer appealed to the UT.

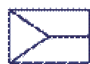
The main thrust of the taxpayer's case was that UK VAT law (in particular sections 13 and 8, VATA 1994) makes no reference to the fact that the goods must actually be acquired into a warehouse that is physically located in the UK. In the taxpayer's view, what is required is simply that the goods are placed into a warehousing regime in any EU member state.

The UT allowed the appeal and found that section 13(1), VATA 1994, makes the provisions regarding the place of acquisition subject to section 18, VATA 1994 and section 18(3) treats certain acquisitions as taking place outside the UK. Section 18(3) was engaged in the instant case because the UT found that references in VATA 1994 to a "warehousing regime" were not limited to those within the UK.

This decision demonstrates how complex the world of indirect tax can be when goods are traded across international borders. In addition to the usual complexity of the VAT rules, when goods are also liable to excise duty and are traded within the confines of a fiscal warehouse, the tax rules become even more complex.

Ordinarily, when a member state has failed to implement a provision of EU law correctly, the courts interpret the domestic law in a manner which conforms with EU law, but on this occasion the UT felt unable to do so.

The decision can be viewed here.



***AGROBET CZ* – tax authority must pay undisputed part of claim for input VAT pending investigation into other elements of the claim**

In *AGROBET CZ, s.r.o. v Finanční úřad pro Středočeský kraj* (C-446/18), the CJEU has, following the opinion of the Advocate General, confirmed that the Czech Republic tax authority cannot delay the recovery of input VAT pending an investigation into other elements of the taxpayer's VAT claim as the amount of excess VAT was clear, precise and unequivocal.

In the view of the CJEU, the principle of fiscal neutrality was offended by a system that did not permit a taxpayer to seek repayment of an agreed amount in circumstances where that amount was clearly, specifically and unequivocally identified. The CJEU said that taxpayers should not have to bear the weight of such undisputed amounts while other parts of the claim were investigated.

Whether an amount was undisputed was for the parties to agree, or in the absence of agreement, for the national court to determine. The judgment confirms that tax authorities must pay any undisputed part of a VAT claim provided the amount was clearly, specifically and unequivocally identified. The judgment should also ensure that tax authorities act proportionately when dealing with claims that are only partly disputed.

The judgment (currently unavailable in English) can be viewed here.

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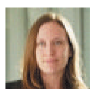

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