VAT:alert
August 2017

Welcome to Blick Rothenberg's VAT:alert. This briefing contains timely information on VAT issues that may affect your business.

Update on e-books

Members of the European Parliament have voted overwhelmingly (48 to 1) to allow e-books to benefit from the reduced rates of VAT that currently apply to most printed books. It will be up to each individual Member State to decide whether to adopt a reduced rate which could see the UK applying a zero-rate in order to align the treatment of e-books to that of printed books.

Reduced rates have been adopted in a number of EU countries for some time (e.g. Luxembourg 3%, France 5.5%). The book industry and suppliers of e-books in the UK will no doubt be anxious to hear what the Government and HMRC's decision will be.

However, a final decision on this may still be some months away as the Czech Republic objected to any changes being implemented until a wider review of digital services has taken place.

Making Tax Digital ("MTD") postponed

This is the UK Government's ambitious plan to require all businesses to submit information digitally to HM Revenue & Customs ("HMRC") directly from their accounting software every quarter.

It was originally intended to be introduced in 2018. However, it has been postponed for corporate and income tax filing until April 2020 and for VAT filing until April 2019.

The Government will introduce legislation to require a business trading over the VAT registration threshold (currently £85,000 p.a.) to retain its records digitally and provide information to HMRC at least quarterly commencing in April 2019.

There will be a live pilot scheme starting in March 2018 in order to enable more than a year of testing before any business is required to adopt the arrangement.

The postponement of MTD has been welcomed by most businesses, as it will require significant preparation and new accounting systems to be put in place to ensure compliance under the new regime. Further announcements will follow regarding the VAT accounting requirements which are expected to include comprehensive details covering all business transactions (i.e. all sales and purchase) to support the figures contained in the quarterly VAT returns.

HMRC clarifies its distinction between a care home and a hospital

Following a recent ruling in the First Tier Tribunal, HMRC has been forced to review its policy on what constitutes the construction and sale of a care home as opposed to a building regarded as a hospital.

The construction services and first grant of a major interest in a residential care home is zero rated for VAT, while a new hospital building is subject to the standard rate VAT at 20%.

HMRC sought to argue that if a building is equipped to improve or prevent the worsening of its residents' illnesses then it was acting as a hospital and failed to benefit from the zero-rate relief.

The Tribunal disagreed concluding that residential care goes beyond basic needs and that the provision of specialist health related services would not necessarily mean a care home becomes a hospital or similar institution.

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HMRC has now issued guidance on their revised policy which provides two major indicators where they are prepared to accept zero rating. Firstly, hospitals aim to treat patients quickly and discharge them, whereas a care home provides lengthy periods of medical care for people suffering from long term conditions. Secondly, hospitals deal with injuries, illnesses and health conditions that require medical or clinical intervention and rely primarily on qualified staff to carry out its provision of health care. In contrast, a care home provides personal care with the main purpose of enabling a person to look after themselves. However, personal care can involve a high level of medical treatment and if this is essential to the residential accommodation being provided within the building then zero rating for the construction and first sale of that building should not be jeopardised.

HMRC has also clarified that specialist treatment centres comprised in separate buildings, or in a distinct part of a building, will also benefit from zero rating provided it is used solely (or at least 95%) by the residents of a care home.

Care homes that have incorrectly incurred VAT under HMRC's previous policy may now be able to recover this retrospectively.

All fees charged by eBay in the UK are now subject to VAT

From 1 August 2017 the fees charged by eBay to its UK customers (sellers) have become subject to VAT.

This results from a change in its contractual relationship with its customers. Previously, customers contracted with eBay Sarl, an entity located in Luxembourg, and no VAT was charged to business sellers in the UK under the intra-EU place of supply rules. However, as fees are now charged by eBay UK Limited, VAT at 20% will be added.

This change should not adversely affect most VAT registered sellers as they will simply be able to recover the VAT as input tax via their UK VAT returns. However, unregistered sellers (i.e. those trading under the £85,000 annual threshold) and those operating under the VAT Flat Rate Scheme will now be charged VAT by eBay that they won't be able to recover, unless they choose to register voluntarily or switch from the Flat Rate Scheme to a normal registration.

This change will also catch those sellers who should be registered for VAT but fail to register, some of whom have provided a false or someone else's VAT number to eBay in order to avoid being charged VAT in the past.

Sellers who are private individuals (i.e. not businesses) are also not affected by this change as they should have been charged VAT by eBay in the past regardless of which EU country the service provider was located.

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