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Not for Profit VAT update

The last 12 months have been extraordinary and 2021 has delivered several updates during the Chancellor's Budget and 'Tax Day' in March. We look forward to welcoming you back to in-person events later this year to discuss issues which may impact you, but in the meantime, Phil Salmon, Partner and Head of VAT, shares a summary of the key changes. So, take a break from your desk and, weather permitting, take your laptop or tablet into the garden for a change of scenery.

Changes to VAT partial exemption

On the inaugural 'Tax Day' on 23 March 2021, the Government announced the outcome of a call for evidence into simplification of the VAT partial exemption and Capital Goods Scheme rules.

Unfortunately, the outcome is somewhat underwhelming. The Government announced it is setting up a central point to submit applications for partial exemption special methods, as well as an application form. Whilst these changes might increase the efficiency with which applications are logged by HMRC, they seem unlikely to increase the speed at which decisions as to whether to approve such applications are made.

HMRC is reviewing sectoral frameworks within which methods may be set, and has said it will consider increases to the partial exemption de minimis limit and the threshold at which items fall within the Capital Goods Scheme. Given that simplification of these provisions was a key recommendation of the Office for Tax Simplification, this is a disappointing outcome.

On the same day, HMRC also published a Revenue & Customs Brief (the Brief) acknowledging the impact COVID-19 may have had on VAT recovery rates. The Brief says that HMRC will allow organisations to request temporary changes to their partial exemption method to reflect changes to their business practices as a result of COVID-19.

For organisations using the standard method, HMRC indicate that the standard method override may apply, and for organisations using special methods, they may accept a request to use a method based on prior year figures that are more reflective of the normal trading patterns.

Amendments to methods will be time limited with a default limit of one year. Most importantly, HMRC state that they will only allow a change to a method which is requested after the end of the tax year in exceptional circumstances.

The tax year of an organisation is the return period ending March, April or May depending on its return stagger. This means that organisations with calendar quarter VAT returns had until 31 March 2021 to request an amendment to their partial exemption methods. Given that the Brief was only issued on 23 March 2021, one must hope that the late issue of this guidance is accepted by HMRC as an 'exceptional' circumstance.

Partly exempt organisations who have seen their recovery rates drop due to COVID-19 are strongly encouraged to seek advice as to whether they could benefit from this announcement.

A similar accelerated process will apply to Capital Goods Scheme adjustments and HMRC have also said that where planned events have had to be cancelled then an adjustment to the value of the supply would normally arise in an income based calculation to reflect refunds. HMRC have indicated that requests not to make an adjustment will be considered sympathetically.

Budget – VAT updates

Hospitality

The reduced rate of 5% VAT, which was brought in to support the hospitality sector, will remain in force until the end of September 2021. This will then increase to 12.5% until 31 March 2022, before returning to the standard rate of 20%. This will be of limited interest to the sector but a number of places, such as Cathedrals and other organisations in the sector, have cafes or other catering outlets that may be able to reopen over summer and benefit.

VAT registration

The VAT registration threshold remains frozen at £85,000 of taxable turnover until April 2024.

Making Tax Digital

As previously announced, Making Tax Digital will be extended to all VAT registered business from 1 April 2022.

More (well... different) penalties!

The current Default Surcharge penalises both the late submission and the late payment of returns. A new points-based penalty for the late submission of VAT returns will be introduced to replace the surcharge. Businesses will incur a £200 penalty for each late submission after a points threshold has been reached. A point is awarded for each late return. For an organisation on quarterly returns, the penalty will be issued once it has four points. If four returns are submitted on time, then accrued points expire. The upshot of this is that under the old system the surcharge was tax geared so even if you were late submitting returns, no penalty was due if no tax was due on the late return. Now you can get penalised for being late even if your returns show no VAT owing to HMRC.

The late payment aspect of the Default Surcharge will be replaced by a percentage based penalty with no penalty due on tax paid within 15 days of when it was supposed to be paid; a penalty of 2% if it is paid within 30 days of when it was supposed to be paid; a penalty increasing to 4% on tax paid more than 30 days late; and an additional 4% penalty calculated on a daily basis from day 31 onwards.

VAT interest provisions will be aligned with income tax with late payment interest also being payable on amounts not paid by the due date until the tax has been paid. The above changes will take effect on 1 April 2022.

Brexit and VAT

Well, it finally happened back in January. The majority of the changes relate to the cross-border movement of goods and are likely to be of less relevance to organisations in the not for profit sector, though who knows what might come further down the line. Here are some of the more important changes.

Intrastat

If you submit Intrastat forms because you engage in the movement of goods between the EU and UK, you will still need to submit Arrivals forms at least for 2021. However, you no longer need to submit Dispatches forms.

EC Sales Lists

These will no longer be required unless your business is in Northern Ireland.

Mini One Stop Shop (MOSS)

If you are registered for MOSS, you will no longer be able to submit the existing MOSS returns to HMRC. You will either have to register for VAT in each of the EU States where you trade, or register in one other EU State to use what is referred to as the Non-Union MOSS and submit returns to that country's tax authority.

VAT return boxes

Boxes 2, 8 and 9 are no longer relevant and should be completed as £nil, unless your business is in Northern Ireland in which case you complete them as normal.

Importing goods

Post 1 January 2021, if you are importing goods from the rest of the world or the EU you should account for VAT using what is known as Postponed Accounting as follows:

- If the value of the goods is £100 and the item is standard-rated, you declare £20 VAT in Box 1 and £20 in Box 4 provided you are able to claim back VAT in full.
- If you are partly exempt, or otherwise unable to recover VAT in full, you would enter the amount of VAT in Box 4 that you are entitled to claim. You should advise your freight forwarder that you wish to use Postponed Accounting as otherwise they will pay VAT and duty and recharge you, or the goods will not be cleared through Customs.

Reverse charges

These have not changed but what has become apparent over the last three months is that a number of clients have been labouring under the misapprehension that the reverse charge only applied to services imported from the EU. The reverse charge applies to all services imported into the UK from a place outside the UK which are subject to the general place of supply rule, ie they are not regarded as being consumed overseas, such as accommodation in a country other than the UK.

Case law – nothing to see here

We reported back in 2018 that the Wellcome Trust had won a First-tier Tax Tribunal case to the effect that the reverse charge did not apply on investment management fees levied by overseas fund managers because in holding a portfolio of investments, the charity was not engaged in a business activity.

We said at the time that the case was likely to be appealed, not least because the VAT at stake was £13m. Appealed it was and the European Court ruled that the Wellcome Trust was wrong, so nothing changes and reverse charges still apply. And yes, the European Court ruling is still binding even though it comes three months after Brexit!

We also reported that the Upper Tribunal held that digital copies of the Times and the Sun should be zero-rated. This was based on the 'always speaking' principle of statutory interpretation. This principle means that when a court gives a decision it is not changing the law, it is simply saying how the law should always have been interpreted.

In this case, the Upper Tribunal stated that since the original purpose of the zero-rate for printed matter was to promote literacy, the dissemination of knowledge and democratic accountability - by having informed public debate - there was no reason that the zero-rate which applies to hard copy publications should not be extended to digital versions of the same item.

This was duly appealed, and the Court of Appeal ruled earlier in the year that the Upper Tribunal was wrong and that digital publications should remain standard rated.

This, of course, only applies to periods prior to May 2020 when the law was changed to zero-rate digital publications.

Making Tax Digital: phase 2

The soft-landing period for Making Tax Digital (MTD) for VAT came to an end on 31 March 2021. From 1 April 2021, organisations must have digital links in place from the initial input of data through to submission of the return. Digital links include:

- Emailing a spreadsheet containing digital information so it can be imported into another software product
- Linking cells in a spreadsheet
- XML
- CSV import and export, and download and upload of files
- API transfer
- Automated data transfer
- Transferring a set of digital records onto a portable device, such as a memory stick, and giving it to someone to upload

We are aware of a number of software providers who are trying to use the end of the soft-landing period to persuade organisations to move away from API-enabled spreadsheets, which may have been acquired when MTD was first rolled out to be more sophisticated, but considerably more expensive products (in some cases an increase from £100's to tens of £1,000's). The sales pitch is usually along the lines that the API-enabled spreadsheet does not comply with phase 2 of MTD.

In most cases this is not true and the initial API-enabled spreadsheet should be perfectly capable of complying with phase 2 of MTD. However, if you would like haysmacintyre to audit your VAT return trail to ensure it remains MTD compliant, we may be able to save you significant software costs.

Cathedrals and COVID-19

It has been a hard year for many organisations forced to close their doors and who now face severe financial pressures, not least Cathedrals and other places of worship. Fortunately, one shadow has been removed for Cathedrals. A now retired HMRC inspector had interpreted a long-standing agreement between HMRC and what is now the Churches Legal Advisory Service in a manner which led to many Cathedrals receiving five and six figure assessments for over recovered VAT. The Association of English Cathedrals and Charity Tax Group, after lengthy negotiations with HMRC, have been able to persuade HMRC that this interpretation was incorrect and the way that Cathedrals had been interpreting the agreement was consistent with what had been originally agreed.

Affected Cathedrals should now be approaching HMRC to regularise the position. This, along with the reopening and the success of the vaccine programme to-date, gives some cause for hope that 2021 might be better than 2020.



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