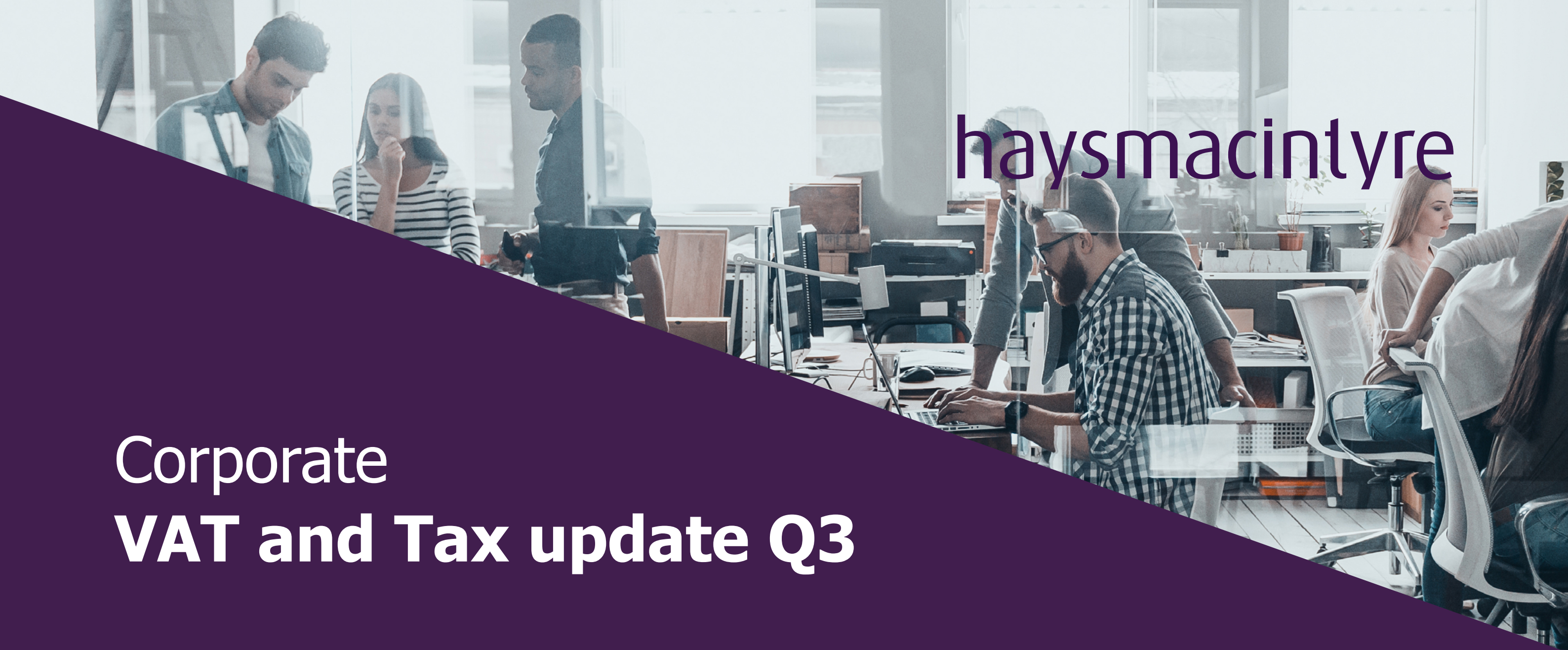

Corporate
VAT and Tax update Q3

Welcome to haysmacintyre's quarterly newsletter for corporate entities. If you wish to explore any of the topics below in further detail and how they may impact your business, please contact a member of the team.

VAT

Reduced-rate for hospitality

As of 1 October, the reduced rate for hospitality has now increased to 12.5% and is expected to remain in force until 31 March 2022. Whilst not as generous as the 5% rate in force since July 2020, it is arguably more useful now that businesses are no longer in lockdown and can benefit from it. This rate applies to:

- Supplies of catering and hot takeaway food. It does not apply to alcoholic drinks and cold takeaway food which were, of course, zero-rated in any event.
- Supplies of sleeping accommodation.
- Certain admission fees to attractions which are not subject to the cultural exemption, such as shows, theatres, museums, circuses, zoos cinemas, exhibitions and what the law refers to as 'similar cultural events and facilities'.

The most significant point to note is that when the legislation was introduced, no special time of supply rules were brought in. This means that the usual rules apply, stating that the basic time of supply for a service is when it is performed. However, if a payment is made or a VAT invoice is issued before that time, then the time of supply becomes that earlier date.

This means that if you can persuade clients making bookings for events after 31 March next year to pay either in whole or in part prior to 31 March 2022 then the amount paid is only subject to VAT at 12.5%, even if the event occurs in say July 2022.

COVID-19 testing

HMRC issued Revenue & Customs Brief 11/21 on 23 August setting out the VAT liability of COVID-19 testing services. This confirms that such services are exempt as the objective purposes of testing are diagnosis and protection of human health and therefore fall under the exemption for medical care.

The Brief confirms that this is the case for tests taken for international flights. There had been some doubt as to whether HMRC would take this view as travel tests are often used to allow people to go on holiday.

The Brief also sets out certain areas where sales of tests are standard-rated. A link to the Brief is here.

Construction self-supply

We dealt with the outcome of the Supreme Court's decision in the Balhousie Holdings case in our last newsletter. Essentially this case concerned the first grant of a major interest in a building intended for use for zero-rated residential purposes. The same provision also applies to buildings intended for use for a relevant charitable purpose.

Another provision says that a VAT charge will be imposed on the recipient if, within a period of ten years from receiving a zero-rated grant of a major interest there is a change of use such that the building is no longer used for a qualifying purpose or the recipient disposes of his entire interest in the building.

Balhousie acquired a new building intending to use it as a care home (which qualifies as relevant residential use). However, this was financed by entering into a sale and leaseback transaction instead of simply borrowing the money from a bank. HMRC argued that the sale constituted the disposal of the entire interest in the building.

haysmacintyre, 10 Queen Street Place, London EC4R 1AG
020 7969 5500 marketing@haysmacintyre.com www.haysmacintyre.com @haysmacintyre

The Supreme Court disagreed with this. HMRC have consequently issued Revenue & Customs Brief 13/21 on 6 October. It is not disputed that a sale and leaseback is two transactions, but the leaseback meant that Balhousie retained an interest throughout.

The Brief confirms that HMRC accept that there is no disposal of an entire interest in similar circumstances provided that there must be an immediate lease in place, which is a seamless transaction with no time lapse. The lease must be for the remaining ten years from the original purchase date or longer, and the property must be continually used or operated for a qualifying purpose meaning that the business suffers no break in trade during the sale and leaseback.

A link to the Brief is here.

VAT on dilapidation payments

HMRC issued a Revenue & Customs Brief in 2020 which set out HMRC's view that certain payments, which have previously been regarded as outside the scope of VAT as being payments of compensation or liquidated damages were, in fact, consideration for the original supply of goods or services to which they related.

This raised the possibility of HMRC taking the view that dilapidation payments were subject to VAT at the standard rate, where previously they were deemed to be outside the scope of VAT.

The Brief had said that changes would take effect from 1 February 2021, however, there has been no subsequent updates.

We now understand that HMRC have backtracked and that draft guidance has been prepared stating that dilapidation payments will not be deemed to be further consideration for a supply of a lease, meaning that they will continue to be outside the scope of VAT.

It is to be hoped that this is the case, and that this guidance will be issued soon to bring an end to the uncertainty HMRC's pronouncements have caused. Read more here.

Home working from abroad

For employers, their primary concern at the outset of the pandemic was to keep things going. They also wanted to ensure that, for those employees who continued to work, they did so in a safe place with their families.

An employee working from home but abroad could be the first time the organisation has needed to consider dealing with any tax authority outside the United Kingdom.

Below highlights the key income tax and social security issues which need to be considered.

What are the employer's obligations?

Employers need to be aware of their responsibilities both in the UK and the country where the employee is based, even though the employee may have returned to their home country as a matter of personal choice.

The employer will need to consider:

- What on-going income tax and National Insurance obligations will continue to de required?
- What is the employee's residence position?
- What are the employer's obligations in the country where the employee has re-located?
- Who within the organisation will ensure all compliance obligations will be fulfilled?
- What actions is the employee expected to undertake?

The income tax and social security ramifications of an employee working in another jurisdiction are far more complicated owing to the need to consider both UK domestic and host country legislation. The challenge many organisations need to address first concerns those employees who left the UK without any guidance being put in place by the employer.

Employers will need to establish where employees will be working and whether income tax and/or social security liabilities will arise in the host country.

Where employers are going to incorporate any working from home but abroad as part of a move towards hybrid working arrangements, consideration will need to be given to the on-going income tax and social security obligations in the host country. Where the employer does not have a permanent establishment in the host country, the employee will be responsible for registering to file a tax return in the host country and for paying income tax due on their remuneration. However, local advice should always be obtained to see if there is a requirement to operate a payroll.

Social security

The basic rule is that social security contributions are due where the employee works. There are certain 'easements' depending upon whether the employee is working in an:

- EU/EEA country; or
- Reciprocal agreement country

However, consideration also needs to be given to employees who are working in countries not covered by either of the above.

Social security in EU/EEA countries

The Protocol on social security co-ordination was included in the UK-EU Trade and Co-operation Agreement. The agreement largely replicated the EU regulations which were in place prior to Brexit. Individuals will only be liable to social security contributions in one country, generally where the employee carries out their activities.

Where there is a liability to pay social security contributions in an EU country, in most circumstances there will be a need for the employer to register with the social security authorities and to operate a payroll in order to pay those contributions across to the host country authority. This will add additional cost for the employer, not only in terms of the higher level of social security contributions due, but also the need to operate a payroll in another country. However, some jurisdictions, will allow the employee themselves to register, report and facilitate the payment of employee and employer social security contributions.

Reciprocal agreement countries

The general rule under these agreements is that an employee is only subject to social security contributions in one jurisdiction, and it is generally where the employee undertakes their activities. Most agreements will allow for posted workers to remain subject to National Insurance contributions while working overseas for the period of time specified in the agreement. Periods of extension are also available, typically upon the agreement of both relevant authorities.

Many agreements contain a provision for 'exceptional circumstances' whereby HMRC and the overseas jurisdiction can agree where an employee is subject to social security contributions based on their individual circumstances. The provision could possibly be utilised where there is uncertainty as to whether the employee has been posted overseas.

Rest of the world countries

The position can be further complicated for those employees who are working in countries where the UK does not have any social security agreements in place, commonly known as the 'rest of the world' countries. No easements are available with these countries and depending upon how long the employee is planning on working abroad could dictate that social security will be due in that country. Under UK domestic regulations, an employee and their employer will remain subject to Class 1 National Insurance contributions in the UK for a period of 52 weeks on earnings paid from the start of the contributions week when they left the UK where:

1. The employee was resident in the UK immediately before going overseas
2. They remain ordinarily resident in the UK for social security purposes while working overseas
3. Their employer has a place of business in the UK

All three conditions must be met in order for the National Insurance liability to continue for the 52-week period. The National Insurance is payable in addition to any social security contributions payable under the overseas location's domestic social security legislation.

A further point the employer may need to consider is whether additional benefits need to be provided to ensure the employee has access to medical care.

Permanent establishment

Another area of concern, which will potentially affect whether a liability to income tax arises in the host country, is whether through the presence of an employee, especially a senior employee, a permanent establishment of the UK business could be created in the host country.

In April 2020 the OECD published guidance concerning the impact of COVID-19 on double tax treaties, including permanent establishment. The OECD guidance stated that where a senior member of the management team had temporarily relocated to another country, then this will not create a permanent establishment. HMRC's own guidance was limited and only applicable for the short-term requirements of managing business through the immediate impact of the pandemic. However, a certain degree of permanence may exist should the employee continue to work from their home abroad. This could mean overseas reporting and taxation obligations for the employer.

Other points to consider

Alongside the income tax and social security issues, employers must also consider the following:

- What changes must be made to the employment contract?
- Does the employee have the right to work in the host country?
- What duty of care arrangements are in place for the employees' health and safety in the workplace?
- Where employees are working outside the UK for prolonged periods, could they acquire employment rights in the host country?
- What type of data security arrangements do employers need for employees working outside of the UK?

Consideration will need to be given to the additional costs which are likely to arise where an employee is allowed to work outside the UK, for example, the difference in the host country's income tax and social security rates but also the compliance costs for the company and employee.

For more information, read our full summary here.

Health and Social Care Levy

The Government announced the introduction from April 2022 of a standalone 1.25% Health and Social Care Levy which will apply to employers and employees. The following are the key financial implications:

- From April 2022, rates of employer and employee National Insurance will increase by 1.25%
- From April 2023, National Insurance rates will revert to the 2021/22 levels and be replaced by a dedicated levy
- The levy will not be charged in respect of apprentices under the age of 25
- Unlike National Insurance, the levy will be paid by people over the pensionable age who are still working

The money raised via the levy will be ring-fenced for investment in health and social care.

haysmacintyre
10 Queen Street Place
London EC4R 1AG

T 020 7969 5500
F 020 7969 5600
E marketing@haysmacintyre.com

www.haysmacintyre.com
@haysmacintyre

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Contacts

Nick Jordan
Partner
T +44 (0)20 7969 5585
E njordan@haysmacintyre.com

Nick Bustin
Employment Tax Director
T +44 (0)20 7969 5578
E nbustin@haysmacintyre.com

Stephen Patey
Senior VAT Manager
T +44 (0)20 7969 5684
E spatey@haysmacintyre.com

Shortlisted 2019 National Firm of the Year

Shortlisted 2019 Tax Team of the Year

Highly Commended Partner of the Year

2021: Best auditor
2020: Best outsourced finance service

Winner: Audit Team of the Year

Top 15 auditor to quoted companies in Adviser Ranking Listing

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