

# VAT update – issues affecting the charity sector

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February 2021

## Areas to be covered

### Case Law

- Colchester Institute Corporation
- Buzzacott client case – licence to occupy
- Royal Opera House
- News Corp, Wellcome Trust

### Updates

- VAT Recovery – annual adjustments & CGS
- VAT and value shifting consultation
- Construction industry reverse charge
- End of temporary reduced rate – extended to 31 March 2021
- Deferral of VAT payments extended

### Brexit

### MTD

## Case Law

### Colchester Institute Corporation (CIC)

- CIC college providing education to 16-19yr old students
- Students pay fees themselves or courses wholly/partly funded by EFA/SFA
- HMRC policy – grant funding not consideration for any supply by the school/college, hence funding outside the scope and education is a non-business activity
- Provision of education in return for a fee is exempt where provided by an eligible body

## Case Law

### Colchester Institute Corporation (CIC)

- CIC undertook major campus development in 2008 at a cost of around £100m
- Applied 'Lennartz mechanism' and recovered VAT on costs attributable to non-business activity
- Lennartz requires that output tax is accounted for in subsequent periods – gives cash flow benefit
- In 2014 CIC submitted retrospective claim for output tax paid – 4 yr cap
- Argued funding from EFA/SFA was payment for the supply of education to students - exempt

## Case Law

### Colchester Institute Corporation (CIC)

- Argued no adjustment to input tax claimed as HMRC out of time to adjust
- HMRC rejected claim, CIC appealed
- FTT agreed with HMRC that grant funded education was non-business activity
- CIC appealed and UTT found in favour of CIC – funding was third party payment for the provision of education – exempt, hence no Lennartz payments

## Case Law

Colchester Institute Corporation (CIC)

However:

- HMRC argued if no output tax, no entitlement to input tax recovery
- Was CIC right that HMRC out of time?
- No- specific legislation requires that all consequences of a mistake are adjusted
- No output tax under Lennartz and hence no entitlement to input tax regardless of 4yr cap

## Case Law

Colchester Institute Corporation (CIC)

Potential implications

- Decision contrary to HMRC policy & published guidance, but potentially wide ramifications
  - What if ESFA funding activities which are not exempt?
  - Entitlement to zero rate reliefs for new buildings
  - Zero rating for fuel & power
  - Impact on School Academies?
- Several cases stood behind CIC
- Clarity needed from HMRC

## Case Law

### Buzzacott client

- Client provides hostel accommodation for homeless under licence agreement
- HMRC initially argued exempt as welfare service with accommodation ancillary, then ruled standard rated as hotel/similar accommodation
- HMRC subsequently confirmed supply is subject to VAT, but argued licencing agreement did not convey a grant of an interest in land or licence to occupy
- Why is this important?



## Case Law

### Buzzacott client

- Grant of an interest in land exempt, but specific exclusions such as hotel or similar type accommodation such as hostels, hence standard rated
- Special rule allows for hotel/hostel accommodation excluded from exemption to be liable to reduced VAT charge – referred to as ‘28 day rule’
- If not a grant of an interest in land, cannot use this special rule

## Case Law

### 28 Day Rule

- Allows for reduced value to apply after 28 days. Broadly if guest stays for continuous period of more than 28 days, then from 29 day VAT only charged on element of payment not for accommodation
- Only applies where accommodation standard rated
- Does not apply where there is exempt service (such as education or welfare) supplied
- 28 day rule only needs to be considered where supply is 'hotel/similar' type of accommodation held out for sale as such which is standard rated

## Case Law

### Buzzacott client

- Case to be heard in March
- HMRC relying on the fact that licence agreement states no landlord/tenancy relationship and agreement not intended to confer exclusive occupation to tenant
- Both parties arguing supply is standard rated but for different reasons
- If HMRC are right, could have wider application, particularly with interpretation of what constitutes a 'licence to occupy'

## Case Law

### Royal Opera House

#### Background

- HMRC took view production/exhibitions costs directly attributable to grant of admission
- This policy changed following challenges by Mayflower Theatre and Garsington Opera - HMRC issued a Business Brief 62/09
- Many organisations use the 'standard' income-based partial exemption method
- HMRCs view is that production/exhibition costs have no direct link with bar/catering income
- Where difference is 'substantial' apply a method based on 'use'
- Broadly a sectorised calculation that omits income streams that are 'unrelated' to show/exhibition activity

## Case Law

### Royal Opera House

- ROH submitted a retrospective claim which was rejected
- Appealed to FTT, - Bar and catering income attracted customers, which in turn funded part of the cost of productions
- ROH's argument was there was a direct and immediate link between production costs and bar and catering income, hence income should be used in turnover calculations
- Accepted by First Tier Tribunal (FTT), HMRC appealed to the Upper Tribunal (UT).

## Case Law

### Royal Opera House

- UT undertook a detailed review of the case law.
- concluded there are two alternative bases for establishing a link to taxable supplies:
  - Where the costs concerned are general costs, i.e. overheads, there is a right to VAT recovery on the basis of a 'direct and immediate' link with a taxpayer's economic activity as a whole
  - Where the costs concerned are attributable to a particular supply or supplies, i.e. residual costs, the expenses must form part of the cost components of specific taxable transactions

## Case Law

### Royal Opera House

- ROH and HMRC agreed that the production costs were ‘residual’ and not overheads
- UT concluded the production costs only had a direct and immediate link with the exempt supply of tickets (and other production-related taxable supplies), not the catering and bar income
- Production costs had an indirect link to bar & catering income and hence could not be included in apportionment calculations
- CoA heard case last week

## Case Law

### News Corp UK & Ireland Ltd (NC)

- NC publishes newspapers such Sunday Times as well as digital versions
- No dispute physical, hard copy versions are zero rated – what about digital version
- NC lost in the FTT, agreeing with HMRC that the legislation only allowed z/r of goods – not services
- The UT allowed NC's appeal on the grounds that the “always speaking” principle should apply
- The law should be interpreted within the context of Parliament's intention



## Case Law

### News Corp UK & Ireland Ltd (NC)

- HMRC appealed to the CoA who found that the z/r provisions only applied to goods
- NC also made representations about fiscal neutrality, but interestingly the Court said this principal only applied where similar supplies were made by different suppliers – hence irrelevant
- Since 1 May 2020, changes were made to the VAT Act to allow for z/r of e-publications
- There are a number of cases stood behind NC and we understand it is now seeking permission to appeal to the Supreme Court

## VAT recovery – annual adjustments

### Basis for annual adjustment

- Many organisations contemplating basis for undertaking annual adjustments
- Covid caused distortion of normal trade
- Charities with charity shops have reduced levels of taxable income/activity
- Museums, galleries, theatres have reduced ticket sales
- Universities have reduced trading income, subsidiaries not be operating
- Mixed bag of implications

## VAT recovery – annual adjustment

### Basis for annual adjustment

- Theatre client asking whether 90% recovery as only income taxable sponsorship
- Charity recovery rate halved as charity shop closed
- University recovery rate down because trading sub not providing bespoke training to businesses
- Direct impact on CGS adjustments unless a special CGS method agreed
- What to do?

## VAT recovery – annual adjustment

### Basis for annual adjustment

- Consider whether the standard method or special method override might apply?
- SMO can be applied where the current method doesn't produce a fair and reasonable result
- However, conditions to trigger SMO must be met – risky approach if special method
- Another option may be to take the average of the last 2-3 years annual adjustments and apply that
- Representations made to HMRC, but still waiting for clarity

## VAT and value shifting consultation

- This consultation seeks views on a proposed revision of the rules for apportioning the consideration between supplies with mixed liabilities in a single transaction
- The current law is non-prescriptive and some businesses pay less VAT by apportioning more consideration (or 'shifting the value') to non-standard rated items
- New legislation will introduce mandatory valuation methods. Cost-based apportionments will not be permitted where items sold in bundles are also sold separately, and therefore their individual sale prices are known

## VAT and value shifting consultation

- This consultation could impact on a number of organisations
- Common for membership organisations to seek to apportion subscriptions between the different benefits – some good, some services
- Most commonly publications
- Many use cost based analysis
- Consultation details on HMRC website
- Closing date 30 March 2021

## Construction industry reverse charge

Coming in 1 March 2021

- Intention is to stop missing trader fraud
- Supplier issues invoice to customer advising that the customer will account for VAT
- Applies to 'specified services' between VAT registered entities
- Generally services that are defined as construction operations for purposes of the Construction Industry Scheme (CIS)

## Construction industry reverse charge

The reverse charge will apply to specified services unless:

- The services are supplied to an end user, such as the property owner, or directly to a main contractor that sells or lets a newly completed building
- The recipient makes onward supplies of those construction services to a connected company
- The recipient is not VAT registered, or required to be VAT registered
- The recipient is not registered for the CIS
- The supplier and recipient are landlord and tenant or vice versa, or
- The supplies are zero-rated



## Construction industry reverse charge

- An end user is a person who receives the specified services for any purpose other than making an onward supply of those services
- Where the customer has not confirmed it is an end user either in writing, an email, or in the contract, HMRC's guidance is reverse charge applies and no VAT is charged.
- If your customer doesn't provide confirmation that it is an end user it cannot be treated as one
- Supplier invoices must make it clear reverse charge applies and customer will account for VAT
- Suppliers may be asking you to confirm status in advance of 1 March

## End of temporary reduced rate

### Temporary reduced rate

- Reduced rate introduced for admission to attractions, holiday accommodation and sales of food and non-alcoholic drinks - boost the tourism and hospitality sector
- Initially applied from 15 July 2020 to 12 Jan 2021, then extended to 31 March 2021
- If payments received before 31 March for events/accommodation/catering to be provided after this date, reduced rate still applies
- Small window left to raise invoices in advance for events taking place after 31 March

## End of temporary reduced rate

### Online events

- For theatres, where there is live performance on at same time, exemption could apply, otherwise digital service hence S/R
- Museums, galleries – no live performance, hence digital services, S/R
- Schools, colleges, universities, likely to be exempt if eligible body as long as ‘human interaction’
- Will come back to ‘digital services’

## End of temporary reduced rate

### Practical issues to consider

- May need to adapt pricing structure to reflect higher VAT rate
- Tills and accounting systems will need to be reconfigured
- Changes to EPOS till systems, online booking engines and back-office functions
- Invoice templates may need to be changed
- Ensure correct rates applied and recorded if VAT return straddles 31 March
- If special retail or accounting scheme used, does this need to be amended

## Covid – payment deferral scheme

Pay VAT deferred due to coronavirus (COVID-19)

The options open to businesses which have yet to pay deferred VAT payments due between 20 March and 30 June 2020 are:

- pay the deferred VAT in full, on or before 31 March 2021;
- join the VAT deferral new payment scheme between its opening on 23 February and closing on 21 June 2021; or
- contact HMRC if you need extra help to pay.

You may be charged interest or a penalty if you do not adopt one of those options

## Covid – payment deferral scheme

### The new payment scheme

- The new scheme enables businesses to pay their deferred VAT in equal instalments, interest free, and to choose the number of instalments, from 2 to 11, depending on when they join the payment scheme
- To use the online service, the business must join the scheme itself, an agent cannot do this for the business. Businesses joining the scheme must:
  - be up to date with all VAT returns;
  - join by 21 June 2021;
  - pay the first instalment when they join; and
  - pay their instalments by Direct Debit.
- If you want to use the scheme but cannot pay by Direct Debit, contact the COVID-19 helpline (0800 024 1222) when the scheme opens on 23 February. An HMRC adviser will help you to join

## Brexit

### Summary of main issues

- UK out of EU and hence outside of the Single Market
- Customs declarations required for imports/exports
- Trade and Corporation Agreement – just an illusion
- Rules of origin ('ROO') – goods that don't satisfy ROO will be subject to Customs duty – consider licensing, tariff quotas
- Declaration needed confirming origin of goods and relevant rule satisfied
- Imports from EU to GB – need a UK EORI number
- Who will complete Customs declaration

## Brexit

### Summary of main issues

- Goods entering UK from EU now liable to import VAT plus Customs Duty
- Payable at point of entry, unless approved for VAT and Duty deferment or use postponed VAT accounting (PVA)
- PVA allows import VAT to be accounted for in VAT returns, Box 1 and Box 4 (subject to normal rules)
- PVA cannot be used if goods imported solely for non-business purposes
- Monthly certificate of VAT postponed – need to register
- Otherwise C79 needed confirming duty/VAT paid



## Brexit

### Summary of main issues

- Where consignment less than £135, no Customs Duty
- B2C supplies – overseas supplier must register for VAT and account for VAT, or operator of online market place must account for VAT
- B2B – importer provides supplier with UK VAT number and applies reverse charge
- For goods sold by GB to EU/NI customers B2B, Customs decs needed, but vary depending on whether post, road, or air and the nature of the goods
- Terms of trade relevant - who is clearing the goods in EU country, the supplier or the customer?

## Brexit

### Summary of main issues

- Some suppliers either registering in EU or appointing fiscal representative
- Evidence of export needed to support zero rating
- Up to 30 June supply of goods from GB less than 150euro to EU Consumers will be liable to VAT in EU – goods more expensive, multiple registrations
- From 1 July an Import One Stop Shop (IOSS) introduced. GB supplier can register in single EU country and account for VAT – negates need for import VAT at border
- Also introduction of Non Union One Stop Shop (OSS) for all services where place of supply EU

## Brexit

### Summary of main issues

- Supplies of services from 1 July, mostly the same, however GB suppliers of digital services to EU between 1 Jan – 30 June can't use MOSS and must register for non union Moss in EU country
- From 1 July - OSS applies
- Digital services – differing views on definition across globe
- The provision of intangible services, e.g. consultancy, advisory, marketing, IPR, staff to EU consumers, now outside the scope
- Need to check whether EU VAT reg crystallised
- TOMS – Supplies in EU, margin zero rated. Germany just announced suppliers must register in Germany

## Getting ready

### Making Tax Digital

- Soft Landing period finishes 31 March 2021
- VAT returns starting from 1 April 2021 must have digital links throughout the VAT accounting process
- A digital link is an electronic or digital transfer, or exchange of data, between software programs, products or applications.
- The use of 'cut and paste' or 'copy and paste' does not constitute a digital link - except during the soft landing period

## Getting ready

### Making Tax Digital

HMRC also accepts that the following are digital links:

- emailing a spreadsheet containing digital records so the information can be imported into another software product
- transferring a set of digital records onto a portable device (for example, a pen drive, memory stick, flash drive) and physically giving this to someone else who then imports that data into their software
- XML, CSV import and export, and download and upload of files
- automated data transfer
- API transfer

## Getting ready

### Making Tax Digital

- Some calculations can continue to be made outside of digital software – VAT recovery calcs & CGS
- Reverse charges?
- Can apply for extension, subject to strict rules
- Details in Notice 700/22

# Questions

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