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Tax

Quarterly indirect tax update

January 2019

1 VAT and Telecommunications, Broadcasting and Electronically (TBE) supplied services

Two welcome simplifications to the operation of VAT on Business to Consumer (B2C) Telecommunications, Broadcasting and Electronically (TBE) supplied services have been introduced on 1 January 2019.

A threshold of €10,000 now applies to supplies of B2C TBE services when determining the place of supply of such services. Where the threshold is not exceeded in a current calendar year and was not exceeded in the previous calendar year, the supplies are subject to VAT where the **supplier is established** rather than the member state where the **consumer is located**. The supplier is obliged to account for VAT where the consumer is located for sales in excess of the €10,000 threshold during a calendar year. It is open to the supplier to opt for the place of supply to be treated as being subject to VAT where the consumer is located and such an option remains in place for two years.

The second change applies to non-EU suppliers of B2C TBE services which are VAT registered within the EU. Such suppliers may now use the non-union Mini-One Stop Shop (MOSS) to account for VAT where the consumer of the TBE services is located within the EU rather than putting in place multiple local VAT registrations.

Treatment of vouchers

The treatment of vouchers is also changing with effect from 1 January 2019. Previously the issue of a voucher did not give rise to VAT, instead VAT arose if and when the voucher was redeemed in return for goods or services. For vouchers issued on or after 1 January 2019, the VAT treatment depends on the classification of the voucher as single-purpose or multi-purpose.

A single-purpose voucher is one where the place of supply of the goods or services and the VAT due on those goods and services is known when the voucher is issued. VAT arises on the issue and any subsequent transfer of such vouchers. The subsequent handing over of the goods or the provision of the services is not a supply for VAT purposes.

Where the supplier is not the business which issued the single-purpose voucher in its own name, the supplier is deemed to have sold the goods or services to the issuer of the voucher.

If a supplier sells a single-purpose voucher at a discount and the voucher is subsequently used at face value by a customer who was not the original purchaser and does not know the actual price at which the voucher was sold, then the discounted amount actually received by the supplier is taken to be the consideration for VAT purposes.

A multi-purpose voucher is one which is not a single purpose voucher and VAT does not arise on the issue of the voucher but on the subsequent handing over of the goods or the provision of the services. Any preceding transfers of such vouchers are ignored for VAT purposes. The consideration for the goods or services is the consideration paid for the voucher or where this information is not available, the monetary value noted on the voucher or any related documentation.

2 VAT treatment of Personal Contract Plans (PCP)

In December 2018, Revenue issued renewed guidance on Personal Contract Plans (PCP) following on from the Mercedes-Benz Financial Services (MBFS) case (C-164/16).

Background

Ordinarily when financing a new vehicle purchase, a Hire Purchase (HP) agreement is structured with the total price of the vehicle spread over the life of the agreement and the customer acquiring all the equity in the vehicle at the end of the agreement. Under this arrangement it is highly likely that customers will make the final payment. Under a PCP contract, the customer makes a payment of 10-30%, followed by relatively low monthly instalments and the finance company sets an expected residual value to be paid at the end of the agreement. This is only payable by the customer, if the customer exercises an option to purchase the vehicle.

Considering how this interacts with VAT legislation under EU VAT law, where an agreement for the hire of an asset provides that 'in the normal course of events', ownership of the asset is to pass to the customer at the latest upon payment of the final instalment, it is deemed to be an upfront supply of goods. Consequently VAT on such supplies is due upfront when the asset is first handed over to the customer. This is the treatment that normally applies to HP agreements. By contrast, an agreement for hire that does not provide that ownership is to pass 'in the normal course of events', eg an operational lease is regarded as a supply of a service and VAT applies as the rental amounts fall due.

Judgement of the Court of Justice of the European Union (CJEU)

The CJEU was asked to consider the meaning of 'in the normal course of events' in order to determine whether the MBFS agreement should be considered a supply of goods (similar to a HP agreement) or a supply of services (similar to an operational lease). The court held that, in order for the agreement to be categorised as a supply of goods, two conditions must be satisfied:

1. there must be a clause expressly relating to the transfer of ownership of the goods from the lessor to the lessee, which can include an option to purchase the agreement; and
2. it must be clear from the terms of the contract that the ownership of the goods is intended to be acquired automatically by the lessee, if the performance of the contract proceeds normally over the full term of the contract.

The national court were responsible for applying these conditions to the case at hand but on the basis that the optional payment under the agreement was a significant proportion of the value of the vehicle, the CJEU's guidance would suggest that it should be regarded as the supply of a service, similar to a lease.

The words, '*contract for hire which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment*' must be interpreted as applying to a leasing contract with the option to purchase if it can be inferred from the financial terms of the contract, that exercising the option appears to be the only economically rational choice that the lessee will be able to make at the appropriate time, if the contract is performed for its full terms.

Irish Revenue application

Revenue may be prepared to accept that a PCP agreement can be treated as a supply of goods and similar to HP agreements, where at the outset of the agreement the only economically rational choice for the customer is to purchase the vehicle at the end of the contract. Revenue is prepared to accept that this may be in the form of the customer exercising the option to purchase and making the final payment or the customer trades in the vehicle and enters into PCP on a new vehicle. This will need to be considered on a case-by-case basis and key considerations include the residual value given to the vehicle and the predicted market value at the end of the term.

Business should carefully consider the VAT treatment of their supplies in light of the judgment, as the designation of the contract as a supply of goods or services will have significant implications for the timing and amount of VAT due on such contracts.

3 VAT treatment of staff canteens

A major change to the Irish VAT treatment of staff canteens occurred in 2005 following a ruling by the CJEU in the 'Hotel Scandic Gasaback' case (C-412/03). Prior to that date, VAT was levied on the greater of the actual takings in the canteen or the cost of operating the canteen including overheads, etc. As many canteens were subsidised, the VAT liability was calculated by treating the total cost of operating the canteen as the 'turnover' of the canteen. In some circumstances, Revenue accepted that the VAT liability relating to the canteen was satisfied, as long as no VAT was reclaimed on canteen related costs (this was known as the 'concessional' method).

Following the decision in the Hotel Scandic case, Revenue accepted that where the staff pay for meals (even where the meals are supplied at below cost) the VAT liability is calculated by reference to the actual canteen takings. The VAT rate applicable is 13.5% for food and 23% for soft drinks. In many cases, depending on the level of subsidy, the operation of the staff canteen will result in a VAT refund to the employer (when VAT on costs exceeds the VAT due on the canteen takings). Following the change in practice, the 'concessional' method was withdrawn.

There are various arrangements in place in relation to the operation of staff canteens and the VAT treatment of the most common scenarios are set out below:

- if a canteen is operated by the employer on a profit-making basis or below cost, then the employer must account for VAT on the actual canteen takings; and
- 'free' canteens where the staff do not make any payment. The employer must account for VAT on the cost of supplying the canteen service. The costs to be taken into account include food, drink, cost of equipment, staff costs and overheads. The overheads include a portion of the rent, light and heat relating to the canteen area and cleaning staff.

Staff canteens are frequently operated by third party catering companies and it is necessary to determine if the caterer is acting as a principal or the agent of the employer to determine the correct VAT treatment.

If the **caterer acts as a principal and collects payments** from the staff (and possibly a subsidy from the employer), the caterer must account for VAT on the amounts received from both the staff and the employer. The employer is also accountable for VAT on any additional costs it incurs in providing a canteen service to its staff (in a similar manner to the free canteens above).

When the **caterer acts as the agent of the employer**, acts in the name of and on behalf of the employer, the employer must account for VAT on the takings, ie the amounts paid by the staff (even where the caterer collects and retains the takings as part payment for the catering services supplied to the employer). The caterer must account for VAT on the payments received from the employer (including retained staff takings).

A trader who holds a VAT56B authorisation is not entitled to use the authorisation to acquire food and drink from suppliers at the zero rate. Third party suppliers must charge the appropriate VAT rate on the goods supplied.

While employers are not normally entitled to reclaim VAT on the purchase of food and drink for their staff, if the employer is liable to account for VAT on the canteen receipts (or costs in the case of a free canteen), a VAT deduction can be taken by the employer for VAT incurred on food and drink used to provide the canteen service. VAT is also deductible on other canteen related costs in these circumstances, eg light, heat, cleaning, etc.

4 VAT Compensation Scheme for Charities

The VAT Compensation Scheme for Charities has been introduced to alleviate the VAT burden on charities and to partially compensate for VAT paid in the day-to-day running of the charity. The initiative applies to VAT paid on expenditure on or after 1 January 2018 and will be paid one year in arrears. From 1 January 2019, charities may be able to reclaim some element of the VAT paid in 2018.

A total annual capped fund of €5 million is available for payment under the scheme (subject to review after three years). Charities will be entitled to claim a refund of a proportion of their VAT costs based on the level of non-public funding they receive. Where the total amount of eligible claims from all charities in each year exceeds the capped amount, claims will be paid on a pro rata basis.

At the date of claim and the time that the qualifying expenditure was incurred, the charity must be registered with Revenue, hold a charitable tax exemption (CHY) and be registered with the Charities Regulatory Authority.

Should the scheme be of relevance of your organisation, please contact us to discuss the eligibility criteria, eligible tax and the application process.

Contact

Please do not hesitate to contact a member of our indirect tax team to discuss any VAT or RCT queries you may have.

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