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Tax

Quarterly indirect tax update

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1 Sugar Sweetened Drinks Tax (SSDT)- compliance procedures manual

As you will be aware, a Sugar Sweetened Drinks Supplier (SSDS) making a first supply of sugar sweetened drinks in the state on or after 1 May 2018, is accountable for SSDT and must register with Revenue as a SSDS and pay the tax due to Revenue.

Revenue have published a SSDT manual containing detailed information and guidance for traders that are engaged in the supply of sugar sweetened drinks and traders or exporters of sugar sweetened drinks.

This manual provides assistance under a number of headings including a step by step guide to determining if a product is liable to SSDT, advice in relation to registration procedures and filing SSDT returns.

Sugar Sweetened Drinks Exporter (SSDE)– Are you aware of the relief available?

It is not well known that a full relief from SSDT is available where sugar sweetened drinks sourced in the state, on or after 1 May 2018, are subsequently supplied (exported) on a commercial basis outside the state. To avail of the relief (which is made by way of repayment) a SSDE must register with Revenue as a SSDE.

The relief is available provided the following conditions are met:

- the exporter is registered as a SSDE;
- the sugar sweetened drinks were acquired in the state by the exporter on or after 1 May 2018;
- the sugar sweetened drinks have been exported to another EU member state or third country; and
- the export is made on or after 1 May 2018.

The following examples illustrate the operation of the relief:

Example one:

A wholesaler in the state sources a quantity of sugar sweetened drinks from a producer in the state. The wholesaler subsequently exports these products to France:

The wholesaler must register as a SSDE in advance of exporting the goods and may then file a repayment claim for the SSDT that was payable by the producer, on the first supply of the sugar sweetened drinks in the state.

Example two:

A producer in the state supplies a quantity of sugar sweetened drinks to a company based in the US. The producer delivers the goods to a transport operator hired by the US based company. The transport operator takes responsibility for delivering the goods. The producer invoices the US based company:

As no first supply has taken place in the state, no SSDT liability is generated. As no liability is generated the issue of relief does not arise.

2 VAT treatment of Personal Contract Plans (PCP)

Asset finance providers should carefully consider the VAT treatment of their supplies in light of recent case law and Revenue guidance

Revenue have recently produced updated guidance with regard to the classification of a PCP as a supply of goods or a supply of services. The question was examined in a recent case of the Court of Justice of the European Union (CJEU), namely the Mercedes Benz case (C – 164/16).

This case involved a dispute between Her Majesty's Revenue and Customs (HMRC) and Mercedes Benz Financial Services UK Limited (MBFS) in relation to a PCP and if such a financing agreement was considered a supply of a good or a supply of service.

Irish VAT legislation

Under Irish VAT legislation, a hire purchase agreement is a supply of goods by virtue of section 19(1) (c) of the VAT Consolidation Act 2010:

"The handing over of the goods to a person pursuant to an agreement which provides for the renting of the goods for a certain period subject to a condition that ownership of the goods shall be transferred to the person on a date not later than the date of payment of the final sum under the agreement."

A lease agreement is a supply of services under section 25(1) of the VAT Consolidation Act 2010.

Background

The background of the case involved MBFS offering car finance through a contract for regular payments and with a fee payable on completion of the financing period should the customer decide to take ownership of the vehicle. The customer also has the option to return the car to the supplier.

Issue in dispute

MBFS viewed the agreement to be a lease agreement, thus a supply of a service. This arrangement would result in the output VAT due on the lease payable on receipt on each monthly payment by the lessee.

HMRC disagreed and viewed the PCP as a supply of a good (ie. as title to the goods would pass under the terms of the PCP), by virtue of the option written into the contract. As such, the VAT would be due upfront when the asset is handed over to the customer.

CJEU decision

The CJEU provided the following guidance in relation to the classification of a contract as a supply of goods:
"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 an 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 term…"

Revenue's view

Revenue has indicated that it is prepared to accept that a PCP may be treated as a supply of goods, in the same manner as a standard hire purchase agreement, 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.

In this regard, Revenue is prepared to accept the requirement to purchase the vehicle at the end of the contract, can be achieved by paying the final instalment to own the vehicle outright or to trade in the vehicle and enter into a PCP on a new vehicle.

However, Revenue has also indicated that the assessment of whether the economically rational choice will be to exercise either of these options will need to be made on a case by case basis. As will be appreciated, 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 applying to composite and multiple supplies and recent CJEU case law

Composite supply

A "composite supply" is defined as one that has a "principal" supply with an "ancillary" element. The VAT rate applicable to the principal or main supply will also apply to the ancillary elements, regardless of whether the component elements are separately priced.

For example, the supply of a zero rated instruction manual together with a mobile phone (23% VAT) would be regarded for VAT purposes as a composite supply, as it is clear that the phone is the predominant element of the supply. In addition, the supply of the instruction manual is not economically dissociable from the supply of the phone and is capable of being supplied only in the context of the better enjoyment of the principal supply (ie. the instruction manual would not have a value independent of the phone).

Multiple supply

By contrast, a multiple supply is defined as being two or more supplies made in conjunction with each other to a customer for a total consideration covering all those where each of those supplies are physically and economically dissociable from each other.

In this arrangement each of the supplies made in conjunction with others is treated as an individual supply and is taxable/exempt in its own right.

For example, a meal made up of food and a soft drink or wine is sold for a single price. The food is liable to VAT at 9%, whereas the soft drink or wine is liable at 23%.

Under the current rules such a meal is taxed as a multiple supply as each of the parts of the meal are physically and economically dissociable from one another. Accordingly, the total consideration payable should be apportioned so that the food element is taxed at the second reduced rate and the drink element is taxed at the standard rate.

Recent case law on such supplies - Stadion Amsterdam CV v Staatssecretaris van Financiën (C-463/16)

This recent case concerned the VAT treatment of Stadion Amsterdam's "World of Ajax" tour. The tour comprises a guided tour of the stadium and a visit to the AFC Ajax museum. It was not possible to visit the museum as a standalone service. As a result, Stadion Amsterdam treated the admission charge as the supply of a single cultural service, attracting a reduced VAT rate of 6%.

The relevant tax authority held that this was single supply for VAT purposes, made up of a principal element (the guided tour) and an ancillary element (the museum visit). As such, the entire price was subject to same VAT rate (ie. all subject to VAT at 21%). The Supreme Court of the Netherlands referred the case to the CJEU.

The CJEU ruled against the taxpayer and held that in the case of a single supply, the VAT rate applying to the whole consideration was the rate which applied to the principal element of the supply (ie. the guided tour). It was held to be a single supply which it would be artificial to split, as shown by the fact that a single price was charged for the tour and the museum visit.

In addition, the CJEU considered its judgement in CPP (C-349/96) that to split a supply, which is a single supply for VAT purposes, would be artificial and distort the functioning of the VAT system.

Contact

We have a dedicated team of indirect tax experts in both Ireland and the UK. Please do not hesitate to contact us to discuss any indirect tax issue in further detail.

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