

Quarterly indirect tax update

December 2021

Finance Bill 2021

Finance Bill 2021 introduced limited changes in relation to Indirect Taxes. The notable changes within the Finance Bill include:

Deposits

A legislative amendment introduced by Finance Bill 2021 has provided that where a deposit has been received and the service in which the deposits has been paid towards has been cancelled, then the recipient of that deposit can no longer issue a credit note to render the VATable amount received as being nil. This amendment was made in line with a European Court of Justice ruling which held that cancellation fees are subject to VAT as they constitute a payment for either a service or a right to access a service.

COVID-19 amendments

A new provision was introduced and provided that no VAT will be payable on the importation of goods and services by or to the EU commission or similar EU bodies in order to combat COVID-19. The extension of the zero rate of VAT which applies to the supply of COVID-19 vaccinations and related in vitro diagnostic medical devices was extended to 31 December 2022.

VAT groups

Following Finance Bill 2021, at least one member of a VAT group must be an accountable person for VAT. The Bill also introduced obligations to inform Revenue if the conditions for a VAT group are no longer met. Should the VAT group not inform Revenue of these changes, they may face penalties for each taxable period in which they fail to notify Revenue.

Farmers flat rate addition

The Finance Bill 2021 decreased the flat-rate addition from 5.6% to 5.5% which was in line with the announcement as set out in Budget 2021. The flat-rate addition is a VAT addition paid to farmers who are not VAT registered. This payment is seen as a form of compensation for the VAT paid on purchases by farmers in connection with their farming activities.



Changes in the VAT treatment of non-refundable deposits

From 1 January 2022, changes in the legislation concerning the VAT treatment of non-refundable deposits is due to take effect. This change mainly affects the hospitality industry (e.g. for hotel room bookings). However, any business that retains forfeited deposits for unused services and uncollected goods may also fall within this bracket.

Currently, suppliers account for VAT on receipt of a deposit. When a consumer cancels a transaction after a non-refundable deposit was paid, the supplier may reduce their VAT liability for the period in which the transaction was cancelled. The amount of the reduction available to the supplier is the amount accounted for on the deposit when it was received.

In order to avail of the reduction, the following conditions must apply:

- the supply does not take place because the customer has cancelled it;
- the cancellation is recorded as such in the books and records of the supplier;
- the deposit is not refunded to the consumer; and
- no other consideration, benefit or supply is provided to the customer by any person in lieu of that amount.

The changes in Finance Bill 2021 will remove the above provision that allows businesses to adjust the VAT initially accounted for on the receipt of the deposit. While caselaw and the legislative change for treating cancellation payments as not subject to VAT is limited, it is recommended that each case should be assessed on its particular fact pattern.

VAT groups

VAT groups were a primary matter for the Finance Bill 2021. There were numerous technical amendments to the provisions of VAT groups. These changes include:

1. At least one member of a VAT group must be an accountable person.

This is a correction of an existing error in Section 15 of the VAT Act.

It has already been a requirement for the remitter to be an accountable person in practice for many years. This change is not set to have any impact on those involved in VAT groups.

For example, if a VAT group has two members both engaged in fully VAT exempt activities, the parent may provide services such as management services to its subsidiary, and VAT grouping would generally be put in place to avoid VAT arising on these services. Therefore, the parent is an accountable person prior to VAT grouping and the change has no impact.

2. The cancellation of a VAT group can take effect from a date earlier than the date of issue of a Revenue cancellation notice.

3. The group remitter must notify Revenue if there are changes which are deemed significant to the “financial, economic and organisational links” between the VAT group members, these can include:

- if a VAT group member is no longer established in Ireland, or
- one of the members no longer satisfies the condition to be an accountable person.

Regarding the notification to Revenue, it must be made within 30 days of the end of the relevant VAT period. If no such notification is made, there are penalties for non-compliance. The penalties are as follows:

- the group remitter will be liable to a €4,000 penalty; and
- where the group remitter is an entity made up of a body of persons, the secretary is also liable to the above €4,000 penalty.

Contact

Should you have any queries in relation to the contents of this article or would like to discuss any indirect tax issue, please feel free to contact us.



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