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Tax

Quarterly indirect tax update

February 2018

1 Have you reviewed your businesses systems and processes?

Businesses should consider taking the opportunity to review their VAT returns and the systems and processes in place in order to identify any irregularities that should be reported to Revenue. It is a particularly opportune time for businesses with a 31 December year end to carry out a VAT review as such businesses will have recently completed their annual return of trading details which was due for submission to Revenue by 23 January.

Common pitfalls identified in reviews carried out include:

- applying incorrect VAT rates to the supply of goods and services;
- reclaiming VAT on entertainment expenses for clients and staff;
- failing to account for VAT on services received from EU suppliers on a reverse charge basis;
- issuing invoices without VAT where they should be zero-rated; and
- reclaiming VAT incurred on goods or expenses incurred that relate to a VAT exempt activity carried out by the business.

Where any irregularities are identified, businesses may have the opportunity to report these matters to Revenue by **self-correcting without a penalty**. This benefits the business by potentially saving money in reaching a settlement with Revenue and to put **appropriate processes in place** to ensure that any errors detected are not replicated.

In order to avail of self-correction without a penalty, the following conditions must be satisfied:

- Revenue must be notified either in writing or electronically through Revenue Online Service (ROS) of the adjustments to be made;
- the notification must include a computation of the correct tax or duty and statutory interest payable;
- a payment in settlement must accompany the submission. This payment can also be made online through ROS; and
- where the net underpayment of VAT for the period being corrected is less than €6,000, the amount of the tax may be included (without interest or notification to Revenue) as an adjustment on the next corresponding VAT return following that in which the error was made.

It is important to note that **time-limits apply**. In relation to VAT, the self-correction must take place before the due date for filing the income tax or corporation tax return for the chargeable period within which the relevant VAT period ends. Where this time period has lapsed, the business may be entitled to make a **qualifying disclosure** to Revenue, but penalties will apply depending on the category of default and the level of co-operation with Revenue.

It is also important to note that the benefit of self-correction without penalty will not apply to a specified year or period, if the business has already been contacted by Revenue in relation to or received notification of a Revenue compliance intervention, ie Revenue audit, Revenue investigation, aspect query or profile review into that year or period. In addition, it will not apply if the proposed correction relates to an instance of deliberate behaviour which featured in any period prior to the self-correction period.

Self-correction without penalty will not result in a compliance intervention. However, such an intervention may arise as a result of normal selection procedures.

Grant Thornton has a wealth of experience liaising with Revenue and dealing with Revenue audits . We can assist your business to prepare for an audit, deal with Revenue on-site and to negotiate any settlements on behalf of your business.

2 VAT exemption for providers of education and vocational training or retraining.

Finance Bill 2017 and managing entitlement to VAT recovery

There have been amendments to the VAT exemption for providers of education and vocational training or retraining. The most notable is the removal of the requirement that the provider of vocational or retraining services is a "recognised body" as defined.

Instead, regulations may now be made which can specify the bodies which provide exchequer funding to providers for the purposes of providing education, vocational training or retraining. Regulations may also be made which can provide for the conditions under which:

- education provided to children or young people would be the curriculum set out by the Minister for Education and Skills, and
- training or retraining services may or may not be treated as vocational training or retraining services.

To this end, those providing both taxable and exempt activities should tread with particular caution as they need to ensure that they are **managing their entitlement to VAT recovery in an appropriate manner.**

As per section 59 of the VAT Consolidation Act 2010 (the VAT Act), a business is entitled to full VAT recovery on all inputs which solely relate to its taxable activities, eg life coaching). VAT legislation does not provide for VAT recovery on inputs which solely relate to exempt activities, eg education.

The VAT on costs which are dual use inputs (ie IT support, heat and light) may be recovered on an apportionment basis. Section 61 of the VAT Act provides for **VAT recovery on costs which relate to taxable and exempt supplies**.

Section 61 of the VAT Act provides for the turnover method as the primary method of apportionment for dual use inputs for VAT recovery purposes. The turnover method is calculated by examining the ratio of the amount of the tax exclusive turnover from deductible supplies or activities for a period against the amount of the tax exclusive turnover from total supplies and activities.

In the past, we have assisted many businesses to manage its VAT recovery. Please contact us to ensure your business is both managing and appropriately maximising its VAT recovery entitlement.

3 Recent update - Relevant Contracts Tax (RCT) and closed contracts

In order for RCT to apply, a number of key components are necessary, **a principal contractor** (principal) must engage a **sub-contractor** to carry out relevant operations under a relevant contract.

The most common error in the operation of RCT is where a principal makes a payment to a sub-contractor without informing Revenue. The principal **must** notify Revenue of each contract (known as contract notification) and in addition, the principal **must** inform Revenue of the payment to be made to a sub-contractor (known as payment notification). If a principal makes a payment to a sub-contractor without awaiting a deduction authorisation from the Revenue (ie details of the payment and rate of RCT to be deducted), **penalties will apply**.

For 2015 and subsequent years, a revised scheme of penalties has been introduced for principals who fail to operate RCT on payments to sub-contractors. The penalties are evidence that the consequences for **non-compliance are penal**:

3%	0% rate subcontractor
10%	20% standard rate subcontractor
20%	35% contractor
35%	Unregistered contractor

As these penalties are significantly higher than the pre 2015 penalty regime, non-compliance in the area of RCT can potentially be extremely costly for those in default.

On the topic of payment notifications, the Revenue's Tax and Duty Manual Part 18-02-11 (electronic relevant contracts tax system) has been revised to advise as follows:

- a principal can make a payment notification for a closed contract up to nine months after the end date of the contract. If the payment was made more than nine months after the end date of the contract, the principal will need to re-open the contract to submit a payment/post payment notification;
- where a contract has been closed for nine months and not re-opened, only unreported payment notifications can be input on that closed contract; and
- where a contract has been closed for eighteen months or longer and not re-opened, no payment notifications either post payment or unreported, can be input on that closed contract.

Due to the heightened Revenue activity in the area, it is more important than ever for principals to ensure they have adequate procedures in place to deal with their RCT obligations. Please contact us to discuss any aspect of the operation of the RCT regime.

Developments at EU level - action plan on VAT

Ensuring all member states have the same flexibility and a uniform structure in which to set their own VAT rates.

On 18 January 2018, the European Commission made a proposal to introduce **greater flexibility for member states to amend the VAT rates they apply to different products**. At the moment, VAT rules agreed by all member states allow for two distinct categories of products to benefit from a **reduced VAT rate of as low as 5% in each country**. A number of member states also apply specific derogations for further reduced rates.

The gradual introduction of the new regime is based on taxation at consumption instead of origin, as initially envisaged. Restrictive rules on the application of rates are therefore no longer necessary to avoid distortion of competition.

The new flexible rules proposed will enable all member states to **apply a third reduced rate between 0% and 5%.** This will be in addition to the two reduced rates of a minimum of 5% and one 0% rate.

The current list of goods and services to which reduced rates can be applied will be abolished and replaced by a new list of products to which the standard rate of minimum 15% must always be applied. This list will include products such as alcoholic beverages, gambling and tobacco. To safeguard public revenues, member states must also ensure that the weighted average of all VAT rates applied is at least 12%.

Reducing VAT compliance cost for small businesses

On the same day, the European Commission also proposed **new simplification rules** to help reduce VAT compliance cost for small businesses.

Under existing VAT rules for small businesses, member states are allowed to exempt from VAT supplies by small enterprises, with an annual turnover not exceeding a given threshold that varies depending on the member state in question. However, non-established small enterprises will, under the current proposal, not be eligible. This means that there will not be a level playing field for small enterprises trading within the European Union.

Furthermore, member states may release exempt small enterprises from certain or all VAT obligations relating to identification, invoicing, accounting or returns. The problem is that only exempt small enterprises have access to such simplification measures and that the **solutions in place in different member states differ greatly**, which has a negative impact on the competitive situation of small enterprises with no access to exemption and thus simplification measures. To this end, the Commission proposes that all small enterprises, VAT-exempt or not, with an annual turnover in the EU of **up to €2 million**, shall be allowed to benefit from simplification measures relating to the VAT obligations.

Member states will also be allowed to continue exempting small businesses with a **maximum turnover of €85,000 in one member state**, which will apply as the maximum exemption threshold common to all member states. Moreover, the Commission proposes that small enterprises not established in a member state could also avail of the exemption, provided that they do not exceed the applicable threshold. A safeguard threshold of €100,000 overall total turnover in the EU will prevent companies with large turnover to benefit from the SME exemption.

The proposal is beneficial as it will reduce overall compliance costs that SMEs face to comply with VAT obligations by up to 18% per year. Furthermore, it will provide a more level playing field for small businesses, whether operating domestically or cross-border in the single market.

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