

VAT Update - March 2017

In every update, our VAT team brings you a brief summary of news from the world of VAT. This month we focus on items which will be of interest to anyone who....

Has incurred penalties for late payment of VAT

The UT case of Swanfield Limited considered whether payments to HMRC can be allocated to the current VAT period or whether HMRC should allocate them to historic VAT liabilities. The effect of allocating payments to historic debt is often that the current VAT liability becomes overdue and therefore triggers additional penalties.

The UT disagreed with HMRC's argument that a VAT liability does not become a debt until the last date for payment so that an early payment cannot be allocated to the current period. However, it did agree that HMRC could allocate payments to historic debts unless the taxpayer requested otherwise. Total Limited has challenged the requirement to pay VAT assessments before they can be appealed. It argued that this breaches the EU principle of equivalence as there is no similar rule for income tax or SDLT.

Uses employment agencies to supply temporary workers

The UT has confirmed the FTT's decision in the case of Adecco, which considered whether Adecco's consideration for placing temporary workers was the full amount received from its clients. Adecco

contended that VAT was only due on its commission charges as the workers' wages were owed directly to the workers. The UT agreed that the contractual position was key to determining the consideration and that the contracts supported HMRC's view that VAT was due on the full amount received. Many charities who are unable to recover all of their VAT were hoping to see a decrease in the VAT cost of agency staff.

Has a cost sharing group

The CJEU released two Advocate General opinions last month regarding the cost sharing exemption. The AG opined, among other points, that a cost sharing group must be a taxable person in its own right, a cost sharing group should not operate cross-border and that the cost sharing exemption is not available to businesses that provide financial or insurance services. The CJEU's judgment will be released in due course and it remains to be seen whether this will follow the opinions of the AG.

Is a holding company

HMRC's long awaited updated guidance on VAT recovery within holding companies should be released by the end of April. Currently, HMRC's published policy is out of line with CJEU judgments and is considered overly restrictive.

If you would like to know more on any of the points above or have another VAT issue you would like to discuss, please contact Sarah Davis (sdavis@pem.co.uk) or your usual PEM adviser.

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