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Weekly VAT News

Week to 6 July 2020

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Welcome to the latest edition of *EY VAT News,* which provides a roundup of indirect tax developments.

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If you would like to discuss any of the articles in more detail, please speak with your usual EY indirect tax contact, or one of the people below. If you have any feedback or comments on EY VAT News, please contact **Ian Pountney**.

EY Events

Webcast – Are you ready for a VAT rate change? – 14 July 2020

COVID-19

EY Tax COVID-19 Stimulus Tracker – Stay up to date with COVID-19 stimulus responses

HMRC statistics – VAT payments deferral scheme

End of UK VAT payments deferral scheme

Update – Revenue and Customs Brief 4 (2020): temporary VAT zero rating of personal protective equipment (PPE) – Extension to 31 October 2020

Brexit

European Commission – Getting ready for the end of the transition period

UK Government consultation on departure from retained EU case law by UK courts and tribunals

Questionnaire for businesses which move goods between Great Britain and Northern Ireland

Court of Justice of the European Union

Judgment: The provision of cabinets and associated services for holding computer servers is not a supply of the 'leasing or letting of immoveable property' or connected services

Judgment: In the absence of bad faith, an abuse of rights or fraud, a tax authority cannot prevent the correction of invoices and adjustment to VAT on the basis that the period in question has been subject to

VAT on the basis that the period in question has been subject to inspection and assessment

C-835/18 Terracult

On 2 July the CJEU released its decision in this Romanian referral asking whether the VAT Directive and principles of fiscal neutrality, effectiveness and proportionality, preclude an administrative practice and/or an interpretation of provisions of national legislation, which prevents the correction of certain invoices and, consequently, the entry of the corrected invoices in the VAT return for the period in which the correction was made. The practice being in respect of transactions carried out during a period which was the subject of a tax inspection, following which the tax authorities issued a tax assessment which has become final, when, after the issue of the tax assessment, additional data and information has been discovered which would entail the application of a different tax regime?

Donauland SRL (DS), a company that was later incorporated into Terracult SRL (Terracult), was subject to a tax audit in March 2014. The tax authority found that during the period 10-14 October 2013, DS had supplied rapeseed to a German company, Almos. However, DS was unable to provide the appropriate evidence that the rapeseed had left the territory of Romania. The tax authority concluded that DS was wrong to apply the VAT exemption for the intra-community supply of goods and raised an assessment on the supplies which it asserted were domestic supplies subject to VAT at the standard-rate.

DS did not challenge this decision and made payment of the VAT. However, Almos later informed it that the invoices issued contained its German tax identification number but that in fact, the goods never left Romania. Almos requested corrected invoices showing the tax identification number of its Romanian tax representative.

DS subsequently raised a number of corrected invoices. In Romania the domestic supply of rapeseed is subject to a reverse charge and the corrected invoices recorded the revised tax status of the transactions. DS sought to correct the VAT it had incorrectly paid.

As a result of the request for a VAT refund, a new tax inspection was carried out and the tax authority rejected the claim on the grounds that the invoices related to transactions carried out during a period which was the subject of a tax inspection and the resulting tax assessment was not challenged at that time, the matter was therefore final. It is that decision which is subject to this referral.

The CJEU noted that it was common ground that any supply of rapeseed made in October 2013 in Romania by a taxable supplier to another taxable person, each with a Romanian tax identification number, had to be subject to the reverse charge mechanism for VAT. Since VAT is not payable by such a supplier, in accordance with Articles 193, 199 and 199a of the VAT Directive, the supplier cannot be regarded as liable for the payment of VAT. The fact that that supplier had paid the VAT on the mistaken assumption that the supply concerned was not subject to the reverse charge mechanism does not permit derogation from that rule. VAT incorrectly invoiced and paid must, in principle, be refunded to the supplier.

The principle of neutrality of VAT is meant to relieve the taxable person entirely of the burden of VAT in the course of its economic activities. As regards the refund of VAT invoiced in error, the Court has previously held that the VAT Directive does not contain any provisions relating to the adjustment, by the issuer of the invoice, of VAT that has been invoiced improperly and that, in those circumstances, it is in principle for the Member States to lay down the conditions in which improperly invoiced VAT may be adjusted. However, where the issuer of the invoice has, in sufficient time, wholly eliminated the risk of any loss of tax revenue, the principle of neutrality of VAT requires that VAT which has been improperly invoiced can be corrected without such adjustment being made conditional by the Member States; the adjustment cannot be dependent upon the discretion of the tax authority.

The CJEU held that, in the absence of a risk of loss of tax revenue, the refusal to allow a supplier to receive a refund of the VAT paid but not due would amount to imposing, on that supplier, a tax burden in breach of the principle of the neutrality of VAT. Furthermore, the principles of fiscal neutrality and proportionality also preclude legislation or an administrative practice such as those at issue in the main proceedings.

The Court noted that the right to a refund of VAT must be denied only if that right is being relied on fraudulently or abusively. The prevention of fraud and potential abuse is an objective recognised and promoted by the VAT Directive and EU law cannot be relied on by individuals for abusive or fraudulent ends. However, in the present case, the referring court makes no mention, in its request for a preliminary ruling, of the existence of fraud or abuse.

In conclusion, a taxable person should not be prevented from correcting invoices issued and earlier VAT returns solely on the ground that the periods in respect of which those transactions were carried out have already been the subject of a tax inspection, at the end of which the tax authority had issued a tax assessment which, having not been contested by that taxable person, had become final.

Comments: Any business challenged in similar circumstances should consider whether this judgment presents an opportunity to revisit the decision.

Judgment: A single supply of management services to both special investment funds and other funds does not fall within the scope of the exemption

Calendar update

Court of Appeal

Latest appeal update

First-tier Tribunal

The letting on hire of a car with a child car seat is two separate supplies, with the seat chargeable to VAT at the reduced rate

HMRC Material

Open Consultation – Draft legislation: The Value Added Tax (Refund of Tax to the Charter Trustees for Bournemouth and the Charter Trustees for Poole) Order 2020

Check if you can use Transit to move goods to the EU and Common Transit countries

Pay no import duty and VAT on importing commercial samples

European Commission

Single Market Scoreboard 2020

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