AAT VAT Update 14 January 2015

In this Month's edition of the VAT update we look at:
1 HMRC changes and finding information
2 Mini one stop shop for small business trading with rest of EU
3 New treatment of VAT on prompt payment discount sales
4 HMRC seem strict and unsympathetic for default surcharge regime
5 Mandatory electronic filing of returns will be applied strictly

1. HMRC changes and finding information

HMRC stopped maintaining their "What's New" area of the website on 9 December and migrated this to https://www.gov.uk/government/latest?departments%5B%5D=hm-revenue-customs

From 1 January an updated Notice 700 has been published. The technical content of this notice is largely unchanged from the August 2013 edition, although there are a number of minor amendments, updates and improvements. The main amendments concern the changes to the place of supply of services rules from 1 January 2015. If you are involved in supplying digital services you need to read this update. https://www.gov.uk/government/publications/vat-notice-700-the-vat-guide/vat-notice-700-the-vat-guide

HMRC estimate that there are 1.974 million registered traders in 2014. HMRC collected £489.9 billion in taxes in 2013-14. VAT accounts for 19% of total tax collected. The good news is that the explanation of the increased yield in VAT is thought to reflect improving economy in the UK. Receipts are now at a peak of £104.7 billion up from £70.2 billion in 2009-10. The fall in 2009-10 and then the subsequent upturn can be explained by the reduction in the standard rate of VAT to 15% in December 2008 then increasing to 17.5% in January 2010, and to 20% in January 2011.

Navigating around the new site is different from the old "What's New" on the HMRC website but it is convenient to find, for example, business briefs linked together. The latest BB49 which deals with prompt payment discounts can be found at https://www.gov.uk/government/publications/revenue-and-customs-brief-49-2014-vat-prompt-payment-discounts/revenue-and-customs-brief-49-2014-vat-prompt-payment-discounts

2. Mini one stop shop for small business trading with rest of EU

HMRC has issued BB46/2014 which gives guidance on how small businesses with a turnover under the UK registration threshold but with sales in other EU countries can register and gain access to the mini one stop shop (MOSS) services for their sales to EU countries.

These small businesses will need to file a quarterly VAT return but will be able to leave out their UK sales from the return, provided the UK registration limit is not breached. This might appear to be an exercise in bureaucratic time wasting as a lot of the boxes will contain a zero but there is a possibility of recovering some UK input tax directly relating to taxable EU business supplies and a proportion of other overheads which cannot be directly attributed to the EU transactions but are partly related (like accountancy fees).

BB46/2014 was published on 10 December 2014 and provides additional guidance to UK micro and small businesses who supply digital services to non-business customers in other EU member states about:

- how to comply with the new VAT rules for digital services that come into force on 1 January 2015
- how to register for HM Revenue and Customs (HMRC) VAT Mini One Stop Shop (MOSS) and still benefit from the UK's VAT registration threshold for sales to UK customers

If you are advising a UK business and:

- are unsure whether the services it supplies are 'digital services' covered by the new rules please read section 2
- that business is currently below the UK VAT registration threshold and wants to register for MOSS to account for the VAT on its cross-border supplies please read section 3
- you want to understand the timescales that apply for registering for MOSS, please read section 4
- you want to understand what records are needed to be kept, please read section 5

https://www.gov.uk/government/publications/revenue-and-customs-brief-46-2014-vat-rule-change-and-the-vat-mini-one-stop-shop-additional-guidance/revenue-and-customs-brief-46-2014-vat-rule-change-and-the-vat-mini-one-stop-shop-additional-guidance

3. New VAT treatment on prompt payment discount sales

At present, suppliers offering a prompt payment discount are able to account for the VAT on the discounted price, even if the prompt payment discount is not taken up by the customer.

After 1 April 2015 the practice changes and suppliers must account for VAT on the amount actually received. The change took effect from 1 May 2014 for supplies of broadcasting and telecommunication services where there is no obligation to provide a VAT invoice; for other supplies, the change takes effect on 1 April 2015.

On 22 December HMRC published BB49/2014 which is HMRC's guidance and sets out the processes for accounting for and recovering VAT when a prompt payment discount is offered and taken up, and provides for an alternative to issuing credit notes. If suppliers do not wish to issue credit notes, certain information must be included on the invoice, including the terms of the prompt payment discount and a statement that the customer can only recover as input tax the VAT paid to the supplier – the HMRC guidance provides recommended wording. In addition, proof of receipt of the discounted amount will be required.
https://www.gov.uk/government/publications/revenue-and-customs-brief-49-2014-vat-prompt-payment-discounts/revenue-and-customs-brief-49-2014-vat-prompt-payment-discounts

4. HMRC seem strict and unsympathetic for default surcharge regime

Sometimes when I read a tribunal decision, I conclude that the tribunal came to the only decision available and that the decision is correct but harsh. In Environmental Practical Solutions Ltd v Revenue & Customs [2014] UKFTT 1118, the company appears to have been making every effort to comply with its VAT obligations but has been persistently late in settling its VAT liability.

HMRC were asked to allow the company time to pay but refused seemingly on the basis that time to pay had been allowed in the past and HMRC decided that enough was enough. I can see both sides here and the company is clearly in the wrong not to have set aside sufficient money to pay its VAT liability when it is due.

In some ways this case is unremarkable and HMRC are entitled to impose penalties. Section 59 of the Value Added Tax Act 1994 ("VATA") provides that a person who has not submitted a VAT return or paid the VAT by the due date shall be served a liability notice. If having received a liability notice a subsequent VAT return or payment is not submitted of paid by the due date he shall be liable to a surcharge equal to the "specified percentage of his outstanding VAT for that prescribed accounting period". Under s 59(5) VATA the "specified percentage" rates are determined by reference to the number of periods in respect of which the taxable person is in default during the surcharge liability period. In relation to the first default the specified percentage this is 2% which increases to 5%, 10% and 15% for the second, third and fourth default respectively.

The company appealed against the following VAT default surcharges imposed as a result of the late payment of VAT:

(1) £1,333.23 in respect of its 06/12 VAT accounting period;

(2) £5,206.93 in respect of its 09/12 VAT accounting period;

(3) £81,39.77 in respect of its 12/12 VAT accounting period; and

(4) £15,5511.52 in respect of its 03/13 VAT accounting period

The company had no evidence to support a claim that it had a reasonable excuse. It had paid in full the VAT in instalments some of which were only a day late so it argued that the full penalty was disproportionate. The Upper Tribunal in *HMRC v Total Technology (Engineering) Ltd* [2012] UKUT 418 (TCC), a decision which is binding on the FTT, considered the issue of proportionality in relation to the default surcharge regime in some depth. It decided that the VAT default surcharge regime viewed as a whole does not suffer from any flaw which renders it non-compliant with the principle of proportionality and, as in *Total Technology*, the fact that a payment of VAT was only be a day late does not render the surcharges disproportionate or invalid.

The concept of fair and reasonable does not apply in tax and the law says that this company was late in making payments and has to pay the penalty.

This appeal was originally listed for a hearing in Cardiff on 6 June 2014. However, when that hearing was due to commence there was nobody present to represent EPS. So a postponement was granted to which HMRC did not object. The FTT considered the failure by the firm of accountants to either attend the hearing or at the very least contact the Tribunal by email or telephone to request a postponement when fully aware of the date and time for which the hearing was listed to be wholly unreasonable and considered it appropriate to make a wasted costs order.

No representations were received from the firm of accountants as to why the firm of accountants should not pay HMRC's wasted costs of £322 and this was confirmed at the FTT decision. Some might feel that this is similar to kicking someone when they are down. I suggest that it is a warning to any firm advising to respect the tribunal and if they are not in a position to conduct an appeal hearing (which is usually the fault of the client) to remember to request a postponement in good time.

Firms of accountants should also remember that HMRC are building a database of agent performance and this will undoubtedly be a potential black mark for the firm involved. Looking to the future, a firm will be well advised to protect its reputation with HMRC.
http://www.bailii.org/uk/cases/UKFTT/TC/2014/TC04206.html

5. Mandatory electronic filing of returns will be applied strictly

Compulsory VAT online filing was introduced for all businesses with a turnover of over £100,000, and any newly registered business, with effect from 1 April 2010 and for all businesses with effect from 1 April 2012. This legislation has already been shown to be a violation of human rights and it should never have been enacted. It is bad law and is detrimental to those with disabilities or who cannot use a computer. But this law saves HMRC considerable cost by transferring the burden of costs to the taxpayer who needs to invest in a computer and training but may have other means of meeting the obligation such as employing someone else to file for him.

In Exmoor Coast Boat Cruises Ltd v Revenue & Customs [2014] UKFTT 1103, Mr Oxenham, the sole director of the company wrote to HMRC asking to continue paper filing of his VAT return on religious grounds. The company's business is running boat cruises (sight-seeing and fishing) out of Lynmouth harbour. An agent completes its PAYE returns online; an accountant submits its corporation tax returns online. Mr Oxenham personally completes the VAT return and wishes to continue submitting it by paper.

Mr Oxenham has interests in other businesses. He owns holiday cottages. Glen Lyn Generations Ltd ('Glen Lyn') is owned by him and his parents, although he is the major shareholder. All three of them are its directors. The company operates a small hydroelectric plant and VAT returns have been submitted electronically by an agent appointed by the company. Its corporation tax return is submitted online by an accountant.

Mr Oxenham gave oral evidence to the tribunal but his claim to be a member of a religious group was not given with any details that made it credible.

Few would disagree with Mr Oxenham who considered the law unfair; he did not see why exemption had to be restricted to members of a religious group; he did not see why exemption had to be restricted to religious beliefs; he considered online filing was made compulsory merely to justify the cost of the online filing system; if he won his case he intended to apply for exemption for Glen Lyn Generations Ltd and clearly hoped to persuade other persons to pursue exemption. He believed that refusing to file online was taking a stand against human behaviour inducing climate change. But that is irrelevant because Parliament has enacted this bad law.

The FTT judge Barbara Mosedale did not consider his claim to be a practicing member of the Plymouth Brethren and/or Jimites to be reliable. I was not satisfied that Mr Oxenham was a practising member of the Plymouth Brethren nor any sect of it, nor of any other religion. That is not to say Mr Oxenham did not have religious beliefs (I address this below); but I was not satisfied he was a member of a religious group as he did not appear to adopt or practice the beliefs of any such group nor was there any evidence a member of any such group would see Mr Oxenham as being a member of it.

Mr Oxenham objects to 'paperless' communications on the grounds that he considers paper communications create 'carbon sinks' to reduce CO_2 in the atmosphere whereas electronic data centres burn massive amounts of carbon fuels thus increasing CO_2 in the atmosphere. An interesting argument but one that lacks common sense.

Factually, while Mr Oxenham has strong beliefs against the use of the internet, his beliefs do not preclude him using the internet. He has a non-interactive website for the company's business.

After an interesting review of the Human Rights law and whether it applies only to individuals, the FTT concluded that it is ludicrous to suggest a company has a religion, or private life or family, nevertheless a company which is the alter ego of a person can be a victim of a breach of A9 (the right to manifest its religion) if, were it not so protected, that person's human rights would be breached.

The role of the FTT is to make findings of fact. It concluded at paragraph 81:
"The simple answer is that the obligation to file online does not interfere with Mr Oxenham's manifesting his beliefs and religion. This is borne out by the evidence. Mr Oxenham has beliefs, which, while they include a strong disinclination to use the internet, nevertheless are compatible with him using the internet to advertise his business and to file (via agents acting on his or his companies' behalf) a number of other returns online. It is therefore apparent that requiring him to file another return online does not prevent him manifesting his religious or other beliefs."

While no doubt EU law does require HMRC to grant exemption to some persons from the requirement to file online, such as if they are elderly or disabled and have difficulties using computers, Judge Barbara Mosedale cannot see how it could be said that proportionality would require exemption to be given to someone whose objection is on religious/moral grounds but is nevertheless prepared in some circumstances to instruct agents to use the internet on his behalf.

This is an interesting decision and clarifies that the exemption from mandatory electronic filing will not be widely available. http://www.bailii.org/uk/cases/UKFTT/TC/2014/TC04191.html

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The views expressed in these podcasts are Derek Allen's personal views and do not necessarily represent AAT policy or strategy.