VAT insight March 2021

TerryDockley&Co
TAKING THE STING OUT OF VAT

The latest VAT developments that could affect you or your clients' businesses

VAT and Budget 2021

The second Covid-19 Budget was never going to be a memorable exercise but rather reflected straightened times. From a VAT point of view, it was not especially kind to smaller businesses and seemed to ignore charities altogether. The following covers both the VAT measures announced by the Chancellor and those published after his speech.

Temporary reduced rate ("TRR")

This special 5% VAT rate was one of the tax companions to the "eat out to help out" campaign, initially running from 15 July 2020 to 12 January 2021 and then extended to 31 March 2021. The Chancellor has further extended the 5% rate up to 30 September 2021, after which it will rise to 12.5% until 31 March 2022, when the affected supplies will revert to the standard rate. The supplies in question are:

- Catering: food or non-alcoholic drink to consume in (when permitted) or carry out.
- Various shows and attractions (when available), to the extent they are not VAT exempt.
- Holiday accommodation, hotels, pitch fees for caravan parks and tents (provided no exemption is applicable).

To make best use of the TRR businesses need to be aware of the tax point rules for services and how they are applied in the context of a change of rate:

- The "basic" tax point is the date of performance. In the context of holiday accommodation and pitch fees this means the date of hire or the date of the holiday period.
- The "actual" tax point can be brought forward to the extent that there is prior payment or a tax invoice is issued.
- In the context of a change of rate, it is possible to flip between the basic and actual tax point and the rules do not require a consistent approach.
- If a business has issued a tax invoice and wishes to pass on the benefit of a rate change, it must issue a tax credit note within 45 days of the change of rate.
- Those on the flat rate scheme can obtain a proportionate benefit but not those within TOMS.

Making Tax Digital ("MTD")

Most VAT-registered businesses with a turnover above £85,000 were required to operate MTD from their first VAT return period beginning on or after 1 April 2019 (although there were some deferrals such as for group registrations). MTD requires businesses to keep digital records and submit returns through MTD compatible software (see https://terrydockley.co.uk/making-tax-digital-mtd-what-you-need-to-know/; https://terrydockley.co.uk/making-tax-digital-mtd-what-you-need-to-know-2/). All other VAT-registered businesses will have to use MTD from their first VAT return period beginning on or after 1 April 2022.

Covid-19 VAT deferral scheme

Legislation will be introduced to implement the already operative phase 2 of the scheme enabling businesses to defer VAT payable on returns due between 20 March and 30 June 2020. The original scheme was automatic and all businesses had to do was cancel the direct debit for their

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VAT. The second phase allows for a further deferral to 31 March 2022 by way of up to 11 instalments, the number being dependent on when a business opts into the scheme using HMRC's online portal.

Replacing the default surcharge

Currently the VAT system deals with late submission of returns and late payment of VAT by way of the default surcharge. The surcharge is an unwieldy instrument that imposes a flat rate charge by reference to the number of times that a taxable person has been late in submitting returns and/or paying VAT in a stipulated period. Persistent delay for even very short periods can result in what the Tribunal has on occasions found to be disproportionate consequences. There will be two parts to the new regime: (1) late payment penalties and interest; and (2) late submission penalties.

Late payment penalties and interest

From 1 April 2022, there will be no late payment penalty if tax outstanding on a return is paid within 15 days of the due date. If it remains outstanding after 15 days a penalty of 2% of the outstanding tax becomes due and after 30 days a 4% penalty. Tax that remains outstanding on day 31 will accrue an additional penalty on a daily basis at 4% of the outstanding amounts. This penalty stops accruing once either the tax is paid, or a time to pay arrangement is agreed **and** the taxable person sticks to it.

A light touch will be applied in the first year under the new system. Where the taxable person can satisfy HMRC that there is a reasonable excuse, there will be no penalty. HMRC will also have discretion not to assess a penalty where it considers that special circumstances make one inappropriate. It is not clear how this will be different from the reasonable excuse defence.

Quite separately, late payment interest will apply to tax unpaid after the due date on a simple basis at 2.5% plus the Bank of England base rate. Conversely, HMRC will pay interest on overpaid tax at the Bank of England base rate less 1%, subject to a minimum rate of 0.5%.

Late submission penalties

From 1 April 2022 taxable persons will earn a point for each late return and be notified by HMRC. When a business has submitted four late quarterly returns, or five late monthly returns or two late annual returns, it will receive a £200 penalty. A further penalty will be charged for each subsequent late return but the points will not change. The points expire two years from the month after the month in which the failure occurred unless the busines has reached the penalty threshold. All points reset to zero once there has been "a period of compliance". That means a period in which all returns have been submitted on time (24 months for annual returns, 12 months for quarterly returns and six months for monthly returns) and all returns due within the previous 24 months have been submitted. The time limits for HMRC to levy points depend upon the frequency with which returns are submitted and HMRC has two years to assess a penalty from the day the failure to submit occurred.

Registration threshold

This has been frozen yet again until at least 31 March 2024. Combined with the extension of MTD, this makes Budget 2021 arguably unattractive for smaller businesses. However, these features are to some extent offset by the replacement of the default surcharge and the extra 15 days to pay VAT after each return is due.

To discuss how this may affect your clients or your business, or to talk about a VAT issue in general – contact:

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