



Tax Insights

VAT news - April 2017

HMRC issues revised guidance on holding companies

Following recent case law, HMRC have revised their policy on holding companies and input VAT recovery, clarifying their stance in a number of areas where there has been much uncertainty.

Following the Court of Justice of the European Union (CJEU) decision in the joint cases *Larentia +Minerva* and *Marenave* HMRC has reviewed its policy in respect of holding companies and deduction of VAT incurred on acquisition costs. To deduct VAT incurred on costs of acquiring shareholdings in subsidiaries their view is that each of the following conditions must be satisfied:

- the holding company making the claim must be the recipient of the supply;
- the holding company must be undertaking economic activity for VAT purposes;
- that economic activity must involve the making of taxable supplies;
- if the holding company is VAT grouped with its subsidiaries, it makes taxable supplies or loans for which it earns interest and the loans support the making of taxable supplies by the VAT group.

One area of particular note is HMRC's view on what they term contingent consideration for management services. HMRC's guidance says that if a holding company incurs costs in providing or intending to provide management services to subsidiaries, whereby any payment will be contingent upon the profitability of those subsidiaries, then the holding company is not engaged in economic activity. In their view this is because where services are supplied for no

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consideration or there is no contractual expectation that consideration will be received, there is no supply for VAT purposes. This could be an area of concern for businesses and the basis for HMRC's policy will have to be carefully examined on a case by case basis, taking into account the case law in this area.

The updated guidance can be accessed [here](#). It is hoped this will provide some certainty to businesses on HMRC's treatment of holding companies and VAT recovery. Should you have any concerns or would like to discuss the revised guidance in detail, please contact our Indirect Tax Team.

Cultural services VAT exemption - British Film Institute

The CJEU decision in the *British Film Institute* (BFI) case will disappoint many charities and some non-profit making bodies who were hopeful that the UK's restrictive definition of "cultural services" was on course to being widened.

BFI made supplies of admission services to film showings and accounted for VAT on this at the standard rate during 1990-1996. In 2009, BFI applied to HMRC for a reimbursement of this VAT paid on admission services to film showings, arguing that the supplies were VAT exempt under the cultural services exemption, but HMRC rejected the claim.

EU VAT legislation states that "*certain cultural services*" are exempt from VAT when provided by "*bodies governed by public law or by other cultural bodies recognised by the member state concerned*". This was only transposed into UK law with effect from 1996. BFI sought clarity on whether it could rely on EU VAT law in the absence of UK VAT law.

The CJEU followed the decision of the Advocate General, ruling that EU VAT law was not of direct effect, meaning it could not be relied upon by BFI in the absence of domestic law. The terms were not sufficiently clear or precise to have direct effect, so the supply of admission services to film showings did not qualify for the exemption. Moreover, the term "certain cultural services" provided Member States with an element of discretion in determining which cultural services could be exempt; the aim of this was to allow Member States to consider the diversity of cultural traditions and regional heritage within the EU.

Charities and non-profit making bodies who are concerned about the outcome of this decision should contact our Indirect Tax Team.

VAT treatment of temporary workers – Upper Tribunal decision

The long awaited Upper Tribunal (UT) decision in the case of *Adecco and others* (Adecco) was recently published. The decision will be of importance for businesses and charities that use temporary workers, or those that have tripartite agreements in place.

Adecco contended that it only supplied introductory and payroll services to its clients, and received commission for this. Therefore, Adecco argued that it was only liable to account for VAT on its commission charge. The temporary workers provided their services to the clients, and Adecco paid the temporary workers on behalf of its clients. There were contracts in place between Adecco and the temporary workers, and between Adecco and the clients.

In reaching its decision, the UT referred to the Supreme Court decision in the *Airtours* case, and placed much emphasis on the contractual arrangements between the parties, and whether this reflected the economic reality of the transaction.

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The UT found that since the client paid Adecco a fee and a commission, this indicated that the client believed it was paying Adecco for the provision of the temporary workers, and not merely introductory and payroll services; this appeared to be the economic and commercial reality. Consequently, Adecco should account for VAT on the full consideration, including the payments made to the temporary workers.

Interestingly, the UT mention that they hoped their decision is clear, but they doubted that they had provided guidance – except at a very high level – that would enable the VAT liability to be determined without a thorough analysis. At the same time, the UT stated that “*the liability in any particular case depends on the construction of the contractual provisions and interpretation of the facts*”, and “*...are always open to debate*”.

The fact that the outcome of the decision is inconsistent with the *Reed Employment* decision in 2011, suggests that further clarification on the VAT treatment of transactions in this area is required. Due to the significant amount of tax at stake in this area, it may not be the last we hear of this issue.

If you have any concerns following this decision, or wish to discuss the impact of the decision on your business, please contact our Indirect Tax Team.

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