2017 CIOT Indirect Taxes Conference

Indirect Tax | Tax voice



29 November 2017

This year’s Indirect Tax Conference was held at the Hilton Park Lane on 3rd October 2017.

Chaired by Michael Conlon QC, he introduced an impressive line-up of speakers covering topics such as practical VAT and Customs duty issues expected to flow from the rapidly approaching “Brexit”, a technical analysis of the liability of payment and transfer services, current property tax issues and a case law update.

The audience used an interactive Q&A tool to ask real-time questions and participate in polls; which was generally well received and increased the level of audience

participation.

As well as technical sessions, attendees heard from the Office of Tax Simplification (ahead of the publication of its VAT simplification review) and were able to participate in research around the VAT registration thresholds and data extraction by HMRC. Practical and project management lessons were reflected on in a VAT compliance session presented by Alfreda Espada Martinez of Ford Motor Company, looking at the work involved in getting ready for Spain's introduction of real-time reporting.

Michael chaired a panel of experts: Jeremy White (Barrister), Alan McLintock (Ford Motor Company & CIOT Chair of Indirect Tax Sub-committee), David Milne QC and Paul Morton and Nigel Mellor (OTS). Picking up on various issues arising out of the slots on Brexit, OTS activity and payment and transfer services.

Brexit – practical VAT and Customs Duty Issues

The first session of the day and, arguably the topic that is most pressing in parliament and many boardrooms was on Brexit. A split session led by Jeremy White (Pump Court Tax Chambers) and Alan McLintock (Chair of the CIOT Indirect tax sub-committee) provided comprehensive coverage of both the VAT and Customs Duty challenges to be overcome – and challenges there are in abundance. Jeremy highlighted the tensions between the desire for frictionless trade and establishing a new international trade policy, whilst considering pragmatic and realistic solutions. Alan examined the impact of the negotiation timeline as well as what this might mean for cashflow, supply chains and facilitation measures.

Payment and transfer services

David Milne (Pump Court tax Chambers) led us through arguments regarding payment and transfer services – are they exempt or taxable? In brief, it is clear that David does not consider that the ECJ has provided any certainty on the matter. Building on a consideration of the provision, as set out in what was Article 13B(d)(3) of the Sixth Directive (now Article 135(1)(d) of the Principal 2006 Directive) and reflecting on the findings in *AXA* (October 2010), *Bookit and NEC* (May 2011) and the comments in *Sparekassernes Datacentre* (SDC), David noted the difficulty that the Court of Appeal had in *FDR Ltd* (2000). Of some concern in the CJEU case *Nordea*

Pankki Suomi OYJ (July 2011) and the *Bookit* and *NEC* cases was the lack of an Advocate General's Opinion. The session concluded with an examination of the Upper Tribunal decision in *DPAS* (15 August 2016) to refer two questions to the CJEU – is *DPAS*'s supply prima facie exempt and, if it is, is it carved out from exemption as being debt collection despite it being supplied to the debtor rather than the creditor.

OTS VAT Review – what changes can we expect?

Paul Morton and Nigel Mellor, both of the OTS, followed up an introduction to the range of the work of the OTS with a detailed report on their VAT simplification review, the timetable and the findings. Specific issues noted were the implications of having such a high registration threshold, the complexity arising from multiple rates, issues arising from VAT administration (in particular, regarding formal rulings, penalty and appeals processes) and issues arising from Special Accounting schemes, partial exemption methodologies and the option to tax and the capital gains goods scheme. It is worth noting that a survey had been undertaken by Ipsos Mori of over 2,000 companies and some of the key findings were that:

- 20% of unregistered borderline businesses admit to having taken some action to remain under the threshold
- Most common approach – closing the business or stopping advertising (47% of those restricting turnover admitted this)
- refusing or turning down work (21%)
- asking customers to purchase materials (16%)
- reducing prices of products
- splitting the business – operating as a separate legal entity or artificially separating the business by product or service (both 10%)

Paul and Nigel finished with some comments on VAT and MTD – the opportunities, the additional risks and possible changes to make MTD a better fit. The VAT review has since been published and the Chancellor responded in the Budget on 22nd November.

Property – current issues and hot topics

Martin Scammell provided a detailed and engaging outline of the key issues as regards the property sector. Starting with the new VAT avoidance disclosure regime

which is increasingly being referred to as DASVOIT (Disclosure of Tax Avoidance Schemes: VAT and Other Indirect Taxes), Martin debunked the myth that it should shift the burden from all taxpayers to a smaller number of promoters and highlighted some particular difficulties that will potentially arise with Hallmark 4 and Hallmark 7. As regards commercial transactions, interesting points were made as regards the changing boundaries in relation to VAT exemption – licenses to occupy, rights over land and the identification of immovable property (noting in particular, the Upper tribunal decision in *Sibcas*), overage and updates to the guidance on anti-avoidance and the option to tax.

Martin also covered a number of points in relation to TOGCs, the Capital Good Scheme where a series of acquisitions were made (Water Property Ltd), the *Iberdrola Immobiliara* case (upgrading of a sewage plant as part of development) before looking at a number of zero-rating points arising from the *Astral Construction* and *J3 Building Solutions* cases as well as the *Languard*, *Taylor Wimpey*, *Summitt Electrical Installations* and *Balhousie Holdings* cases.

VAT Compliance 2017 – best practice, resourcing and real time transaction reporting

The penultimate session was, arguably, a view of the near future. Alfredo Martinez of Ford Motor Company set the scene with an overview of the Ford European business activities and its Indirect tax compliance function. Alfredo then proceeded to outline the new information dimension – in particular the importance of transactional information to addressing the tax gap. Having set the scene as regards the range of possibilities, an outline of the Spanish requirement to perform real-time reporting was provided. A key point being that VAT taxpayers are obliged to provide (within 4 to 8 working days) very detailed information to the Tax Authorities electronically. Whilst it will lead to the reduction in the need to provide some information returns, the tax authorities will be able to check and cross-check data with other businesses. This is generating a lot of queries.

Case Law Update

The final session was a reminder of the regular flow of interesting cases being heard by the Courts. Daniel Lyons of Deloitte provided an entertaining and informative review of twelve cases covering a broad range of technical issues – partial

exemption of finance houses, bad debt relief, treatment of temporary staff, third party repair costs, recharges between associated companies, barring orders or failure to provide the requested information, voucher schemes, exemption for financial intermediary services, cost sharing exemption, manufacturer rebates, unredeemed vouchers and a fascinating case on fiscal neutrality (the *Learning Centre (Romford) Ltd* case). In the light of the increasing level of tax devolution the latter case may be just one of many that will need to address tax inconsistency in a domestic context.