Postponed VAT accounting and the non-business use issue

Indirect Tax

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Postponed VAT accounting was introduced on 1 January 2021, as a method of deferring the payment of import VAT from the time at which the goods are imported at the UK border to their inclusion in the next VAT return. The aim of the administrative simplification was to increase efficiency at the UK border and ease the VAT cash flow burden on business when importing goods as a result of changes following the UK's exit from the EU. The postponed VAT accounting scheme includes imported goods both from the EU and outside of the EU, as these are treated the same following Brexit.

Prior to the UK's exit from the EU, UK businesses importing goods from the EU would have self-accounted for the tax due on the goods in their VAT return under the acquisition VAT rules. After leaving the EU, if the postponed VAT accounting (PVA) rules had not been introduced, businesses in Great Britain would have had to start declaring import VAT at the border or via a duty deferment account in respect of goods being imported from the EU. This would have been new for businesses that had only ever purchased goods from within the EU (post-Brexit, the acquisition VAT rules are still available to businesses in Northern Ireland).

The legislation for the PVA scheme is The Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (tinyurl.com/4hd39cxa) and goods imported under PVA are termed 'relevant goods' defined as: 'goods imported into the United Kingdom by a registered person used or to be used for the purposes of any business carried on by the registered person'.

Business and non-business use

On 11 February 2021, six weeks after the PVA rules came into force, HMRC added new wording to the PVA guidance (tinyurl.com/3zbptwk9) as follows: 'You cannot account for import VAT on your VAT return if you import goods you know will be used solely for non-business purposes.'

This additional guidance from HMRC made it clear that two meanings of '*used for non-business purposes*' were relevant for the PVA rules (which are based on importation rules). These two meanings are:

1. The goods are imported for private use with no business use at all.
2. The imported goods are used in the business, though as the use is attributed to income deemed 'non-business' for VAT purposes (for example a grant), the input VAT recovery is restricted.

Although it was widely understood that imports for private use (as per scenario 1) were not eligible for PVA, and this was the same position as under the EU acquisition rules that had previously applied, it was a surprise to taxpayers affected by the non-business PVA rule described in scenario 2 above. These goods are used in the business even though they are designated as being for non-business use for various reasons, and this was a change from what the position had been under the EU acquisition rules. These taxpayers had already used PVA since 1 January 2021 in respect of goods imported in scenario 2 circumstances. Affected businesses had to make error corrections for these transactions and change their processes going forward. The administrative simplification only delays the point at which import VAT is due. It has no impact on the amount of VAT paid to HMRC.

On 8 April 2021, HMRC's PVA business/non-business guidance was further updated to allow 's 33 bodies' (for example, local authorities) to ignore the scenario 2 non-business restriction: 'You cannot account for import VAT on your VAT return if you import goods you know will be used solely for non-business purposes, **unless you are a body that is eligible to reclaim import VAT through a VAT refund scheme (Section 33).'**
(tinyurl.com/mr3j78km)

This was good news for 's 33 bodies' but still left taxpayers that are importing goods to be used in the business, but some of which are deemed as non-business use, with having to implement different rules for different types of import classification. For larger and/or complex taxpayers, this increases the scope for error, not only with

their own staff but with logistics providers too.

Next step

Following feedback from several affected taxpayers that the non-business rule is causing increased resource, bureaucracy and errors to the extent that some taxpayers no longer use PVA, the CIOT has submitted a request to HMRC that the position is reviewed to simplify the position. Affected taxpayers already self-account for VAT on reverse charges and use PVA for imports with a full or partial input VAT restriction if they are partially exempt, so we have suggested that it would be pragmatic to have a single administrative process for scenario 2 non-business imports used in the business too.

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