Christmas Tax Newsletter, 17 December 2014

Welcome to our Festive Tax Newsletter, with a round-up of the major tax issues from 2014 which are still ongoing, the latest tax news from this week, as well as a look forward to training and other developments in 2015.

Contents

Latest Tax News 2
HMRC moves charity guidance to GOV.UK site 2
HMRC issues guidance on abolition of Employer NICs for under 21s 2
CTG obtains more clarity from HMRC over VAT on direct mailing services 2
Prompt Payment Discount & VAT – HMRC consultation summary 3
Changes to Benefit in Kind rules 3
Orchestra tax relief 4
Tax Avoidance Disclosure consultation summary 4
Revised Intrastat arrivals exemption threshold from 1 January 2015 5
Changes to the VAT sports exemption from 1 January 2015 5
Pensions Tax Changes 5

2014 Round-up of ongoing issues 6
Research & Development Expenditure Credit 6
VAT Groups with overseas branches - Skandia 6
Subsidiary Gift Aid 6
Green Energy Income – Corporation Tax Treatment 7
Short Term Business Visitors in the HE Sector 7
VAT on eBooks 7
Annexes - VAT 8
Knowledge Transfer Partnerships – VAT 8

Coming soon in 2015…. 9
Tax Training Courses 9
OTS Employment Status Report 10
BUFDG Tax Survey 10

Latest Tax News

HMRC moves charity guidance to GOV.UK site

On 11 December HMRC moved its charity tax guidance to the GOV.UK website, including Charities and Tax and VAT for Charities. More information about the move to the GOV.UK website can be found in HMRC's brief.

Back to top

HMRC issues guidance on abolition of Employer NICs for under 21s

Employer National Insurance Contributions for employees under 21 years of age will be abolished from 6 April 2015, and HMRC has just issued guidance for employers covering new category letters, details of new rates, and what to tell employees.

Back to top

CTG obtains more clarity from HMRC over VAT on direct mailing services

The Charity Tax Group ('CTG') has been in discussions with HMRC and the Direct Marketing Association ('DMA') regarding the VAT treatment of direct mail services.

CTG and DMA have reached a broad agreement with HMRC on both past and future VAT treatment of direct mail services involving the preparation, printing and strategic distribution of mail-packs on behalf of charities and other bodies.

Start date for new policy approach

Crucially, HMRC has agreed to postpone the start date from 1 October 2014 to 1 April 2015. This means that until 31 March 2015 charities can continue to use existing arrangements without HMRC taking retrospective action (except where HMRC consider these arrangements constitute avoidance or abuse, whereby the whole should then be standard rated as marketing services). This gives affected charities time to consider how they may need to restructure any such arrangements/contracts.

HMRC will be issuing detailed guidance in the new year regarding their policy to be enforced from 1 April 2015.

CTG's understanding of the present position

CTG understands that HMRC's current position regarding direct mail services is as follows:

- The printing and distribution of fundraising mail packs when provided together as a composite supply may continue to be zero rated until 31 March 2015.
- The printing of direct mail packs (but not distribution) will continue to enjoy zero-rating beyond 31 March 2015. The following will be regarded as part of a composite zero-rated supply:
    - The services necessary and essential for the preparation of the mail packs for mailing by a carrier (including addressing and sorting as required by the carrier)
    - All design and creative services prior to design and printing of a mail-pack.
- The supply of all services that are advisory, planning and strategic are always standard-rated, and cannot be included as part of a zero rated supply.
- The supply of distribution services are (and will be) standard-rated if provided as a separate supply, and exempt if provided by Royal Mail as an agency disbursement for the charity under downstream access arrangements. (It should be noted that CTG does not agree with this

technical interpretation in relation to the VAT treatment of the delivery element but this is currently HMRC's position).

Retrospection

HMRC has agreed retrospective action will not be taken except in cases where the composite zero-rated supply has been, in HMRC's view, structured to include strategic, planning and advisory services (which should then be standard rated). In general they will not take retrospective action or raise past assessments because of genuine misunderstanding of the position by the industry sector and charities may therefore continue to use existing arrangements until 1 April 2015.

For further details and the background to this issue please see the previous BUFDG news article.

Back to top

Prompt Payment Discount & VAT – HMRC consultation response summary

HMRC has published a summary of the responses to their consultation on the implementation of changes to the VAT accounting for Prompt Payment Discounts ('PPD'). The summary confirms that, from 1 April 2015, all businesses that offer PPD will be obliged to account for VAT on the sum actually received in return for the goods or services supplied. This will therefore increase VAT costs for universities.

However, respondents to the consultation had concerns about administrative burdens, how PPD would be processed and the cost of implementation. HMRC agree that businesses should not have to issue credit notes when there is a reduction in consideration because a PPD is taken up. They acknowledge that a single invoice might set out the terms on which the discount was offered and that other evidence (e.g. bank statements) could identify the sum actually paid and hence the amount of VAT due to HMRC.

Back to top

Changes to Benefit in Kind rules

HMRC has issued summaries outlining the outcome of four consultations relating to the Benefit in Kind ('BiK') rules on the following subjects:

Trivial Benefits Exemption:

A statutory exemption will be introduced with effect from 6 April 2015 to allow employers to identify and treat certain low value BiKs as 'trivial' and hence exempt from income tax and NICs, and also not reportable to HMRC. Four conditions must be met so that no tax liability arises:

- the benefit cannot be cash or a cash voucher,
- the cost (or average cost if provided to more than one person) of providing the benefit must not exceed £50,
- the benefit cannot be provided in recognition of particular services performed by the employee, and
- the benefit cannot be provided under a salary sacrifice arrangement, or any other contractual obligation.

The £50 limit may seem low, however, as currently drafted, there is scope to provide multiple trivial benefits in a tax year. Please see the HMRC Summary for more information.

Voluntary payrolling for benefits in kind and expenses:

During the 2015-16 tax year, HMRC intends to amend PAYE regulations so that employers can opt generally to payroll BiKs with effect from 6 April 2016. The Government has decided that a limited number of the more popular BiKs can be payrolled initially (cars, car fuel, medical insurance and gym membership). Please see the HMRC Summary for more information.

Exemption for paid or reimbursed expenses:

From 6 April 2016 there will be a major change for employers who pay, reimburse, or provide BiKs in respect of expenses incurred by their employees. The current system that allows employers to apply to HMRC for a 'dispensation' in respect of paid or reimbursed expenses or the provision of BiKs, where there is no net liability to tax, will be abolished.

New measures will exempt from income tax certain expense payments and BiKs where they would have been eligible for a deduction had they incurred and paid an amount equal to the expense themselves. However, the exemption is conditional on the amounts being calculated and paid or reimbursed in an HMRC 'approved' way (subject to regulations made by HMRC), and the payer operating an expense system will have to check that expenses are actually incurred and tax deductible. As announced in the Autumn Statement, the payment or reimbursement cannot be provided as part of 'relevant salary sacrifice arrangements'.

The exemption will also allow employees to be paid a flat or scale rate in respect of qualifying expenses which can either be set by HMRC or approved on application to HMRC. Please see the HMRC Summary for more information.

Abolition of the £8,500 threshold:

The £8,500 threshold for 'higher paid employment' will be abolished from 6 April 2016, so all employees will be taxed on their BiKs and expenses equally. Some exemptions for tax and NICs will be maintained, for instance in relation to ministers of religion earning less than £8,500, and a further exemption will be introduced for employees who work as carers in respect of board and lodging.

The relevant NIC legislation will be amended to align the payment of NICs by the employer with the new income tax treatment. The relevant PAYE regulations governing P9D and P11D returns will be amended and published in 2015. Please see the HMRC Summary for more information.

Back to top

Orchestra tax relief

The Autumn Statement announced that there will be a consultation in 2015 on the design of a new corporate tax relief for orchestral productions.

Back to top

Tax Avoidance Disclosure consultation summary

This consultation sought views on how to strengthen the Disclosure of Tax Avoidance Schemes (DOTAS) regime and how the VAT Avoidance Disclosure Regime (VADR) might be updated to align more closely with DOTAS. Specifically, the consultation sought views on whether to simply bring the existing VADR up-to-date to reflect changes and developments in the VAT landscape, or whether it would be better to change the regime to work more like DOTAS or to actually incorporate VAT into DOTAS itself. The consultation outcome document confirms that HMRC will continue to work with interested parties to further develop thinking on how the VADR might be updated, with a view to issuing a future consultation.

Back to top

Revised Intrastat arrivals exemption threshold from 1 January 2015

HMRC has issued Revenue & Customs Brief 47/2014 announcing that the exemption threshold for Intrastat arrivals will increase from £1.2 million to £1.5 million from 1 January 2015. The exemption threshold for Intrastat dispatches (£250,000) and the delivery terms threshold (£24 million) remain unchanged.

Back to top

Changes to the VAT sports exemption from 1 January 2015

Further to issuing Revenue & Customs Brief 25/14 in June, the Value Added Tax (Sport) Order 2014, (SI 2014/3185) now provides for the extension of the sports exemption by statute by amending Gp 10, Sch 9, VATA 94. The change to the sporting exemption, which will now include non-members as well as members of sports clubs, comes into effect on 1 January 2015 and is a mandatory exemption.

BUFDG will be approaching HMRC to obtain a revised version of the letter from HMRC to BUFDG from March 2013 stating how HEIs should apply the sporting exemption, to take account of this change in legislation.

Back to top

Pensions Tax Changes

I recently met with Mercer to discuss the changes in the tax rules for pensions. They explained that the way in which pensions are taxed has changed radically with further changes on the way. Higher paid employees could be hit particularly hard by the new tax rules, and situations where higher paid employees are moving to new employers for an improved salary package could result in unexpected tax demands.

The new tax rules are complex and their effect will depend on the specific pension scheme involved, as all schemes in the HE sector have different terms, and the individual salary package, as well as years of service to date and level of inflation. This could be further complicated by the proposed, but not yet agreed, changes to the USS scheme.

There is also a particular CPI time bomb ticking in relation to pensions tax at the moment because low levels of CPI reported in September 2014 affect the amount of increase in benefit HMRC will allow members before extra benefits start counting towards taxable benefits.

For some examples of how the new tax rules might affect employees please see these examples prepared by Mercer.

The potential tax liabilities have led to several highly paid employees in the sector opting out of their pension schemes, which may not always be the best, or the only, solution.

In many ways, this is a personal tax issue for employees. However, employers may want to consider what the impact of the new rules is on the way they remunerate and reward their employees. Mercer has a modelling tool ('CREST') which they can use to work with organisations to look at how their reward packages work and interact with the various pension schemes and the new tax rules. It can be used for USS, TPS and LGPS. This gives the institution an understanding of the implications of the tax changes to enable them to communicate with affected employees on the subject. There may even be circumstances where they wish to make changes to salary packages as there are some limited options to improve matters in some circumstances.

If you are interested in learning more about Mercer's modelling tool and how it might help, please contact Mike Harrison or Kevin Painter at Mercer directly.

Back to top

2014 Round-up of ongoing issues

Research & Development Expenditure Credit

BUFDG is currently arranging a meeting to be held in January with HMRC's R&D specialists to discuss this issue further.

Our latest update for members on this issue from 15 December, including information from a recent meeting between PwC and HMRC's R&D Policy team, can be found in this news document, and further background to this issue can be found in our news article from November.

Back to top

VAT Groups with overseas branches - Skandia

HMRC is still looking into the implications of the Skandia CJEU decision whereby it was decided that an overseas branch of a Swedish VAT group had to be treated as a separate taxable person for VAT. This decision contradicts what everyone thought they understood about taxable persons and VAT groups, and if implemented in the UK could result in additional reverse charge VAT being payable by universities. There is a chance that HMRC will not implement the decision in the UK, if there is sufficient reason to differentiate the UK VAT grouping rules from the court's decision. We will be following this with PwC in the new year. Further background on this case can be found in our news article.

Back to top

Subsidiary Gift Aid

On 31 October ICAEW issued revised guidance on the accounting treatment of subsidiary company gift aid payments to parent charities, and the previous Charity Commission guidance on the subject was withdrawn on the same date. While this resolved a period of uncertainty for many HEIs in relation to their subsidiary accounts, the issue of the tax consequences has not yet been concluded.

HMRC is discussing the tax issue with the Charity Commission and is expected to issue guidance on this early in the new year.

Our most recent news article on this topic provides more details, as does the lively discussion on the tax discussion board.

Back to top

Green Energy Income – Corporation Tax Treatment

There is debate with HMRC over the correct treatment of 'green energy' income for corporation tax purposes. HMRC's initial stance was that this should be classed as miscellaneous income, which would not receive any tax exemption and would be taxed on a gross basis. However, BUFDG is in discussions with HMRC to demonstrate that this should in fact be classed as trading income, which would then receive the same treatment as other trading income in universities.

BUFDG representatives met with HMRC about this issue in September and we are in the process of following up the meeting by working with the Charity Tax Group to provide further evidence to HMRC of how green energy schemes operate in HEIs and other charities. More information will be made available when we get it.

Back to top

Short Term Business Visitors in the HE Sector

Cobia has now formally engaged with HMRC on behalf of BUFDG to clarify how and when the STBV rules apply to visitors from overseas in the HE sector. HMRC's specialist expatriate team in Manchester has agreed to act as a central point of liaison to approve all suitable guidance for BUFDG members and we anticipate having this prepared early in the new year.

We are currently compiling a list of common scenarios which provide uncertainty for members and would be grateful if you send me the following general information in order for us to ensure that as many scenarios as possible are included in the guidance before submitting to HMRC for approval:

1. What is the purpose of the visit to the UK (lecturing/research/any other common roles)?
2. Will the individual provide any lecturing or other teaching services for the University?
3. How long is the visit to the UK expected to last?
4. What will the UK university reimburse (e.g. salary/ living expenses / accommodation / travel / other)
5. What will the weekly rates of reimbursement typically be?
6. Are receipts required?
7. Which countries will individuals typically come from?

Please respond directly to me by **Monday 5 January 2015**, as we anticipate submitting the information to HMRC by the 9 January.

Back to top

VAT on eBooks

After the promising, but not entirely relevant, K Oy decision given by the CJEU regarding books sold on electronic physical carrier media, Deloitte had a UK tax tribunal on eBooks scheduled for November. However, the hearing had to be postponed and is currently being rescheduled so it's still a case of 'watch this space'.

This could ultimately result in large VAT savings for the HE sector as more books are purchased in electronic form, as they could receive zero-rating if the courts decide they should be treated in the same way as physical books.

For more information, read our article about the K Oy decision.

Back to top

Annexes – VAT

An Upper Tribunal decision in the summer stirred up concerns over whether separate buildings could sometimes be treated as annexes for VAT purposes. Depending on how HMRC decides to follow up this case this could mean that the construction of new student accommodation blocks would no longer receive zero-rating and new non-business research buildings would have additional conditions to meet before their construction could achieve zero-rating. Therefore this is a significant issue for the sector.

We have been working with Martin Scammell to review the annexes guidance in general and have approached HMRC about the issues. Unfortunately, due to illness, the issues have not yet been reviewed within HMRC, but we are hopeful they will be progressed early in the new year.

The issue was originally raised in this tax discussion.

Back to top

Knowledge Transfer Partnerships – VAT

Several HEIs have raised concerns over the new guidance on VAT and Knowledge Transfer Partnerships ('KTPs') issued by Innovate UK, the new entity administering this funding. The guidance is different from that given when KTPs were administered by the Technology Strategy Board and appears to be at odds with HMRC's own guidance specific to KTPs, which BUFDG took considerable time discussing with HMRC before it was published.

We have been in touch with Innovate UK about their revised guidance and they have agreed to look at it again and will be back in touch with us once they have made any revisions they feel are necessary, in order for us to discuss the amendments. We'll update you all when we have more information.

There are also potential VAT issues around the way the grants are now given by Innovate UK. Previously a grant was given by Innovate UK to the HEI and some money was also given to the commercial partner who then paid the HEI for services. Innovate UK is now giving all the money directly to the HEI, at least in some cases. We understand from KPMG that HMRC still consider input tax relating to the services provided to the commercial partner to be recoverable, albeit that those services are now paid for with third party consideration. However, there are still some issues to iron out regarding valuing the services provided to the commercial partner, and we're working on obtaining some clarity in this area for you.

Back to top

Coming soon in 2015….

Tax Training Courses

BUFDG tax training courses coming up in the early part of 2015 include:

Business Travel - The Road to Compliance; 15 January, London (also Manchester – date TBC):
Employee expense claims cover a multitude of seemingly straightforward scenarios, such as claiming for costs incurred travelling to work-related training at a different location through to more regular journeys to cover departmental colleagues. But are they really that straightforward, or are there rules which could catch you out? What about the '10 mile rule', or the '40% attendance' test, among others?

Anthony Bennett from Cobia will guide you through an interactive and informative day to give you a detailed understanding of the tax rules, as well as giving you an opportunity to raise any specific queries and providing suitable guidance and knowledge to cascade back to your colleagues.

Click here for more details and how to book the London course.

Cobia will be repeating the course for us in Manchester shortly afterwards and we are currently investigating dates and venues and will publicise this as soon as possible in January.

An Introduction to VAT in HEIs; 26 February, London:
Back by popular demand is this introduction to the strange and complex world of VAT in HEIs. Course material will be similar to previous sessions, but with a new presenter. Cambridge's Kerry Sykes has passed the baton over to yours truly. I will explain some basic concepts, illustrate some of the situations peculiar to the HE sector, and highlight the areas of difficulty where you may need to take additional advice.

The course is aimed at VAT Managers and other finance professionals who are responsible for completing the University's VAT return and/or working with professional advisors on university projects. Anyone new to the HE sector and working on VAT issues would benefit.

You can put the date in your diaries now, and a booking link will be publicised at the beginning of January.

Employer Compliance – HMRC's Know Your Customer Initiative; 12 March, Birmingham & 21 April, London:
The HMRC 'Know Your Customer' initiative is the latest addition to HMRC's push to manage employer compliance via the Large Business Risk Review process.

It is a combination of an initial detailed request for, and review of, copies of an organisation's written policies, process maps and internal risk assessment documentation covering everything from expenses and benefits to short term business visitors. That is followed by a focussed, high level, meeting to enable HMRC to understand the workface engagement, and reward and remuneration practices within the organisation at all levels.

In the words of HMRC themselves, 'It isn't a comfy chat'!

These free workshops, hosted by Grant Thornton, are designed to ensure that you are prepared for your review by:

- Providing an overview of the initial HMRC information download request to understand exactly what they want and why;
- Considering the steps that you need to take to meet that request and minimise the areas that HMRC will choose to discuss in more detail.

At the end of the workshop you will be comfortable that you have identified the steps that you need to take to ensure that you have:

- identified your potential risks;
- a plan to ensure that there are processes in place to control and manage those risks; and
- processes which are transparent, live and regularly reviewed.

You can put the dates in your diaries now, and a booking link will be publicised at the beginning of January.

VAT and Property Update, Spring 2015:

Although the details are yet to be finalised, Martin Scammell will be presenting his usual insightful course on VAT and property issues specifically affecting the HE sector. Always bang up to date and always entertaining, this course is aimed at VAT Managers and those working on capital project VAT within the HE sector.

Further details of the date and venue will be made available in the new year. Watch this space…

Back to top

OTS Employment Status Report

The Office of Tax Simplification will finish gathering evidence for its review of Employment Status at the end of the year, and should be issuing its report on this matter in March 2015. Many thanks to all those members who gave me feedback for the meeting with OTS about this, and thank you to Harriet Latham (Open), Andrea Marshall (Worcester), Kerry Sykes (Cambridge) and Caroline Williamson (Birmingham) for attending the meeting with OTS.

Back to top

BUFDG Tax Survey

I will be issuing a tax survey early in the new year, which will cover various topics which I hope will be of interest to members as well as helping to inform some of the work BUFDG is undertaking on your behalf. Topics will include:

- The composition of tax services within your organisation
- Partial exemption methods and recovery rates
- What you expect/want from the BUFDG tax service

Thank you and Merry Christmas

For anyone who has read all the way to the end of my somewhat lengthy festive offering, it just remains for me to say thank you to all our members for making me feel so welcome in my new role this year, and for helping to make my first six months extremely interesting (and busy!). Many thanks to those who have helped out with various projects throughout the year by attending meetings, providing information about their HEIs, and contributing to the discussion boards.

Wishing you all a very merry Christmas and a happy new year.

Best wishes,
Amanda

Amanda Darley, BUFDG Tax Specialist
17 December 2014