



Customs and Excise Quarterly Update

November 2020

In this update we report on (1) import duty and VAT when importing decorations and awards; (2) the moving of excise goods under the Northern Ireland Protocol; and (3) an HMRC Tax Importation and Impact Note in relation to the new Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020. We also comment on three recent cases relating to (1) the Alcohol Wholesalers Registration Scheme; (2) excise wrongdoing penalties; and (3) forfeiture of hand-rolling tobacco.

News

Pay no import duty and VAT when importing decorations and awards

HMRC has published guidance regarding the relief of Customs Duty and VAT when importing or presenting a decoration or award in the UK or EU. [more>](#)

Moving excise goods as freight under the Northern Ireland Protocol from 1 January 2021

HMRC has published a policy paper providing information and guidance on the movement of excise goods, which may involve interaction with customs requirements under the Northern Ireland Protocol. [more>](#)

The Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020

HMRC has published a policy paper providing information and guidance on the Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations. The Regulations aim to allow customs procedures to continue to operate efficiently at the end of the Transition Period, as well as make it easier for businesses to access a duty deferment account. [more>](#)

ANY COMMENTS OR QUERIES

Adam Craggs

Partner

+44 20 3060 6421

adam.craggs@rpc.co.uk

Michelle Sloane

Partner

+44 20 3060 6255

michelle.sloane@rpc.co.uk

ABOUT THIS UPDATE

Our customs and excise update is published quarterly and is written by members of [RPC's Tax team](#).

We also publish direct tax and VAT updates on the first and last Thursday of every month, and a weekly blog, [RPC's Tax Take](#).

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Case reports

Langdale – Lack of knowledge of the requirement for Alcohol Wholesaler Registration Scheme (AWRS) approval did not amount to a reasonable excuse

In *Langdale Brewing Co Ltd v Revenue & Customs Commissioners* [2020] UKFTT 384 (TC), the First-tier Tribunal (FTT) confirmed that a newly established brewing company's lack of knowledge of the requirement for AWRS approval did not amount to a reasonable excuse and penalties imposed by HMRC were upheld. [more>](#)

Paltank – Appeal against wrongdoing penalties dismissed

In *Paltank Ltd v The Commissioners for HM Revenue and Customs* [2020] UKUT 0211 (TCC), the Upper Tribunal (UT) dismissed the taxpayer's appeal against wrongdoing penalties imposed by HMRC under paragraph 5 Schedule 41, Finance Act 2008 (FA 2008). [more>](#)

Mosson – Appeal against forfeiture and penalties allowed due to HMRC's failure to follow correct procedure

In *John Mosson v The Commissioners for Her Majesty's Revenue & Customs* [2020] UKFTT 0359 (TC), the FTT allowed an appeal against the forfeiture of 4kg of hand-rolling tobacco and the imposition of penalties. [more>](#)

News

Pay no import duty and VAT when importing decorations and awards

HMRC has published guidance regarding the relief of Customs Duty and VAT when importing or presenting a decoration or award in the UK or EU.

What can you claim relief on?

Relief can be claimed on a number of items, including the following:

- awards
- cups
- medals, and
- trophies.

The goods must be given by a government, head of state of countries outside the UK/EU or an organisation giving an honorary award in the fields of sport, art, science or public service.

The goods cannot have any commercial intent.

How do you claim relief?

Relief should be claimed at the time of import, however, HMRC may accept a late claim. A certificate or press publicity material relating to the decoration/award or a letter or statement from the organiser of the event will need to be presented to HMRC in support of any claim.

The guidance can be viewed [here](#).

Moving excise goods as freight under the Northern Ireland Protocol from 1 January 2021

HMRC has published a policy paper providing information and guidance on the movement of excise goods, which may involve interaction with customs requirements under the Northern Ireland Protocol.

The Northern Ireland Protocol to the Withdrawal Agreement is considered by the Government to be a practical solution intended to avoid a hard border between the Republic of Ireland and Northern Ireland, whilst maintaining Northern Ireland's status within the UK internal market. As such, under the Protocol, Northern Ireland will maintain some alignment with EU processes. The Protocol will come into effect from 1 January 2021.

Excise movements within Northern Ireland

There will be no change to the rules relating to the holding and movement of excise goods taking place entirely within Northern Ireland.

For excise duty suspended movements, traders must still use the Excise Movement and Control System (EMCS), unless specifically approved to use an alternative control system.

Excise movements from Northern Ireland to Great Britain

As for trade within Northern Ireland, EMCS must be used for excise duty suspended movements, unless approval is in place to use an alternative control system.

Where excise goods are available for consumption within Northern Ireland, there is no requirement to repay the excise duty if the goods are moved to Great Britain.

Excise movements from Great Britain to Northern Ireland

The Trader Support Service has been established to assist traders through the changes due to the implementation of the Protocol. Although the movement of excise goods from Great Britain to Northern Ireland will be largely the same, there will be the following differences:

- an excise duty charge will arise once the goods enter Northern Ireland; in the majority of cases, however, traders will be able to off-set the additional duty with the one already paid in Great Britain;
- for movements of UK excise duty suspended goods from a tax warehouse in Great Britain to a tax warehouse in Northern Ireland, traders must use EMCS unless explicitly approved to use an alternative system.

The policy paper can be viewed [here](#).

The Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020

HMRC has published a policy paper providing information and guidance on the Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations. The Regulations aim to allow customs procedures to continue to operate efficiently at the end of the Transition Period, as well as make it easier for businesses to access a duty deferment account.

Who's likely to be affected?

- parcel operators (particularly those that import low value goods into the UK);
- businesses that use duty deferment;
- freight forwarders; and
- businesses importing goods via the Eurotunnel.

Overview of the measures

The Regulations introduce a number of targeted legislative changes which include:

- changes to the guarantee requirements for duty deferment to facilitate compliant and solvent importers to defer import duty
- an authorisation framework allowing parcel operators/traders to continue to declare multiple consignments of low value parcels in a single customs declaration
- ensuring domestic regulations for recovering import debt for goods admitted temporarily into the UK, maintain alignment with the relevant conventions to which the UK is a signatory; and
- extending customs rules for presentation of goods unloaded and reloaded from a vessel/aircraft so that they also apply to goods arriving from the EU on trains (this measure removes liability to import duty and therefore maintains current operational practice).

Certain provisions were brought into force on 1 October 2020 and others on 31 October 2020, to allow for authorisations to be granted before 31 December 2020.

The policy paper can be viewed [here](#).

Case reports

Langdale – Lack of knowledge of the requirement for Alcohol Wholesaler Registration Scheme (AWRS) approval did not amount to a reasonable excuse

In *Langdale Brewing Co Ltd v Revenue & Customs Commissioners* [2020] UKFTT 384 (TC), the First-tier Tribunal (FTT) confirmed that a newly established brewing company's lack of knowledge of the requirement for AWRS approval did not amount to a reasonable excuse and penalties imposed by HMRC were upheld.

Background

Langdale Brewing Co Ltd (**Langdale**) carries on business as a brewer of beer. Langdale began business in June 2017, with a plan to brew beer for sale in public houses and possibly shops. In November 2017, it made a successful application to HMRC to brew beer.

Following this application, it made a successful application to HMRC for AWRS registration, having not been previously aware of the need for AWRS approval. As such, Langdale had been selling beer to other businesses without the necessary approval from HMRC from 23 September 2017 to 5 January 2018. In March 2018, HMRC issued a penalty to Langdale for carrying on a controlled activity without AWRS approval. The penalty was in the sum of £2,000, calculated on the basis of a non-deliberate, non-concealed, prompted disclosure (as Langdale disclosed the information during an HMRC visit). Langdale appealed to the FTT.

Legislation

Section 88C, Alcoholic Liquor Duties Act 1979 (**ALDA**), prohibits anyone from carrying on a controlled activity otherwise than in accordance with an approval given by HMRC. Anyone wishing to carry on a controlled activity needs to be registered under the AWRS. Pursuant to section 88A(8), ALDA, "controlled activity" includes selling controlled liquor wholesale. Schedule 2B, ALDA, provides for penalties in the event of non-compliance. The penalty for a prompted disclosure to HMRC is 20% of the maximum penalty of £10,000.

FTT decision

The appeal was dismissed.

The main question for the FTT to consider was whether Langdale had a reasonable excuse for not having AWRS approval prior to selling the beer. The FTT applied the principles enunciated in *Christine Perrin v HMRC* [2018] UKUT 156 (TCC) and concluded that Langdale's lack of knowledge, its lack of any intention to deceive HMRC, and its claim that HMRC's guidance was misleading, did not constitute on their own, or together, a reasonable excuse. The need for AWRS approval is set out in Excise Notice 2002 and Excise Notice 226, which are accessible by the public. Further, it was reasonable for Langdale to investigate what approvals it needed. It was able to do this in respect of the brewery application and so there was no reason that it could not also do this for AWRS approval. Further, Mr Fry, the owner of Langdale, had been involved in the pub industry for over 25 years and it was reasonable to assume that he was aware of the need for approval, or be in a position to find this out through investigations and research.

In the FTT's view, none of the arguments relied upon by Langdale were "sufficiently special" to justify a reduction in the penalty, especially as the lack of any intention to deceive HMRC by Langdale was already reflected in the designation of the penalty as non-deliberate.

Comment

This is another in a series of recent cases¹ which have come before the FTT concerning the issue of what constitutes a "reasonable excuse" for taxpayers. This case is a reminder that each penalty case will turn on its individual facts and that ignorance of the law will not constitute a "reasonable excuse" in all cases.

The decision can be viewed [here](#).

Paltank – Appeal against wrongdoing penalties dismissed

In *Paltank Ltd v The Commissioners for HM Revenue and Customs* [2020] UKUT 0211 (TCC), the Upper Tribunal (UT) dismissed the taxpayer's appeal against wrongdoing penalties imposed by HMRC under 5 Schedule 41, Finance Act 2008 (**FA 2008**).

Background

In April 2013, Paltank Ltd (**Paltank**) instructed a shipper to deal with the formalities of importing nine tankers of alcohol (the **Tankers**) into the UK and placing them under a duty suspense arrangement, so that Paltank could deliver them, still under duty suspense, to a bonded warehouse. The shipper did not enter the Tankers onto the EMCS, and therefore no electronic administrative documents were issued. Paltank moved the Tankers to their destinations, where the warehouse-keepers, realising that the Tankers were not in fact in duty suspense, arranged for the necessary duty to be paid. HMRC determined that both Paltank and the shipper were liable to wrongdoing penalties.

Paltank appealed to the FTT.

Legislation

The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (the **Regulations**) provide for the duty suspense regime. Regulation 5 states that an excise duty point occurs when excise goods are released for consumption in the United Kingdom. Regulation 6 provides that release for consumption occurs when goods leave a duty suspension arrangement. Regulation 35 provides for movement of goods between tax warehouses while remaining under duty suspense. Regulation 57 provides that a movement of excise goods takes place under a duty suspense arrangement only if it takes place under cover of an electronic administrative document (i.e. under the EMCS).

Schedule 41, FA 2008, sets out the penalty regime applicable for breaches of the Regulations, based on conduct that is deliberate and concealed, deliberate but not concealed, or neither. It imposes time limits and sets out the statutory defence of there being a "reasonable excuse" for the act or failure that is the subject of the penalty decision.

FTT decision

The appeal was dismissed.

In the view of the FTT, Paltank had been aware that authorisations under the EMCS had not been obtained prior to the movement of the Tankers. There was evidence that it had previously moved goods before authorisations had been obtained as it had, in the past,

1. See the FTT cases of *Leigh Jacques v HMRC* [2020] UKFTT 311, *Vivian Hill v HMRC* [2020] UKFTT 316 and *Bachir Mohamed Belloul v HMRC* [2020] UKFTT 312

received the relevant documents during the course of the movement of goods. The FTT held that the relevant authorisation must accompany the entire movement of goods and that Paltank was a person “concerned in carrying, removing, depositing, keeping or otherwise dealing with the goods”. The penalties were issued in time and Paltank had no reasonable excuse.

Paltank appealed to the UT.

UT decision

The appeal was dismissed.

The UT agreed with all of the FTT’s findings and, in its view, the FTT’s decision was comfortably within the range of decisions reasonably open to the FTT and accordingly was not perverse and contained no error of law.

Comment

Although Paltank may feel aggrieved by this decision, in that it appointed a shipping company to deal with the customs formalities on its behalf, its failure to ensure that all the correct paperwork was in place, contributed to the penalties being upheld.

A copy of the decision can be viewed [here](#).

Mosson – Appeal against forfeiture and penalties allowed due to HMRC’s failure to follow correct procedure

In *John Mosson v The Commissioners for Her Majesty’s Revenue & Customs* [2020] UKFTT 0359 (TC), the FTT allowed an appeal against the forfeiture of 4kg of hand-rolling tobacco and the imposition of penalties.

Background

Mr Mosson had returned to the UK from a coach trip to Belgium in December 2017.

He was stopped and questioned by a UK Border Force Officer who proceeded to ask Mr Mosson if he had purchased any alcohol, cigarettes or tobacco. Mr Mosson informed the Officer that he had purchased 4 Kg of Drum Original hand rolling tobacco and some wine and produced receipts for the goods. Mr Mosson advised the Officer that the tobacco was for his wife and the wine for himself. He stated that the tobacco would last his wife until May/June 2018, when he would travel again. He said that he had previously travelled in 2017 to purchase the same amount of tobacco for his wife. Mr Mosson confirmed that his wife was in employment and would pay for the tobacco.

The Officer informed Mr Mosson that he needed to carry out a further interview to establish whether the tobacco was for personal or commercial use. Mr Mosson declined the further interview since he felt unwell. Shortly after Mr Mosson left the interview room, the Officer seized the tobacco under section 139(1), Customs and Excise Management Act 1979 (**CEMA**), on the basis that it was held for a commercial purpose and therefore liable to forfeiture under section 49(1)(a)(i), CEMA, and regulation 88, Excise Goods (Holding Movement and Duty Point) Regulations 2010. Mr Mosson was not given a copy of the seizure paperwork and the Officer was unable to send it to him because he did not, at that time, have his address.

In April 2018, HMRC raised an excise duty assessment and a wrongdoing penalty. Mr Mosson appealed to the FTT.

FTT decision

The assessment was discharged and the appeal against the penalty allowed.

HMRC argued that Mr Mosson had not challenged the legality of the seizure and its legality and the underlying reason for the seizure (that the goods were for a commercial purpose), had been deemed facts, and accordingly, the FTT lacked jurisdiction to hear evidence about the intended use of the goods seized. A non-deliberate penalty was, HMRC argued, appropriate in the circumstances, as was a non-concealed wrongdoing penalty.

The FTT concluded that the facts of the matter were not in dispute. It noted that, ordinarily, it would not be open to the FTT to consider whether the goods were legal imports improperly seized because the seizure and condemnation had not been challenged. However, HMRC had not complied with the provisions of paragraphs 1 and 2, Schedule 3, CEMA. The seizure had taken place after Mr Mosson had left UK Border Force control and no notice of seizure had been given or sent to him, or served in an alternative permitted manner, with the result that Mr Mosson was unable to challenge the seizure. The Officer who had seized the goods had not recorded the basis on which he considered that the tobacco was held for a commercial purpose, and he had not asked Mr Mosson any questions as to the quality of the tobacco, or the rate at which his wife smoked it.

The FTT concluded that the tobacco was in fact held for personal use.

The FTT also held that, if its decision on the excise duty was incorrect, there were also special circumstances making it right to discharge the assessment to the penalty. The FTT accepted Mr Mosson's health-related explanation as to why he had left the interview and in its view the imposition of a penalty would be "disproportionate, unfair, and contrary to the compliance intention of the penalty law".

Comment

This decision is a reminder to HMRC that its Officers must act in accordance with the law and comply with procedural steps when seizing goods and failure to do so may well lead to any subsequent appeal being successful.

The decision can be viewed [here](#).

ANY COMMENTS OR QUERIES

Adam Craggs

Partner

+44 20 3060 6421

adam.craggs@rpc.co.uk

Michelle Sloane

Partner

+ 44 20 3060 6255

michelle.sloane@rpc.co.uk



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