



Corporate tax update

May 2020

Welcome to the latest edition of our corporate tax update, written by members of RPC's tax team. This month's update reports on the key developments from April 2020. April was not a “bumper” month for corporate tax developments but (as you would expect) there have been some Covid-19 related developments of note. This month's report also includes a summary of the Supreme Court's decision in *Zipvit* (on input VAT recovery). We hope you, your family and friends are all staying safe

VAT zero-rating of certain e-publications from 1 May 2020

On 29 April 2020, the Value Added Tax (Extension of Zero-Rating to Electronically Supplied Books etc.) (Coronavirus) Order 2020 was made. This order has effect from 1 May 2020 and extends VAT zero-rating treatment to e-publications of books, booklets, brochures, pamphlets, leaflets, newspapers, journals, periodicals, children's picture books and painting books. [more>](#)

Covid-19 – tax consultations extended by 3 months

On 28 April 2020, it was announced that certain consultations published at the Spring 2020 Budget would be extended by 3 months, in light of the Covid-19 pandemic. The government has confirmed its commitment to the planned reforms, but has offered the extension to allow interested parties to have their say on the proposed tax changes. [more>](#)

Covid-19 and corporate tax residence

On 7 April 2020, HMRC published updated guidance on both (1) company residence for tax purposes, and (2) risk of creating a UK permanent establishment (PE) in each case in light of the Covid-19 pandemic. [more>](#)

Zipvit – questions as to input VAT recovery referred to ECJ by Supreme Court

On 1 April 2020, the Supreme Court referred to the ECJ a number of questions as to whether the recipient of postal services may deduct input VAT in respect of those supplies in circumstances where all parties (including HMRC) had incorrectly treated the supplies as VAT-exempt. [more>](#)

ABOUT THIS UPDATE

Our corporate tax update is published every month, and is written by members of [RPC's Tax team](#).

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

To subscribe to any of our publications, please click [here](#).

Digital Services Tax – new HMRC guidance on registration, filing and payment

On 1 April 2020, new guidance was published by HMRC on the digital services tax (DST). [more>](#)

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The sale of e-audio books, and other e-publications not covered by the list above, remain subject to VAT at the standard rate.

This change had been expected to take effect from December this year. However, it has been brought forward in an attempt to further support literacy following the introduction of Covid-19 lockdown measures.

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

Covid-19 – tax consultations extended by 3 months

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The extended consultations (10 in total) include:

- Plastic Packaging Tax: Policy Design – now closing on 20 August 2020
- Preventing abuse of the R&D tax relief for SMEs: second consultation – now closing on 28 August 2020

- Notification of uncertain tax treatment by large businesses – now closing on 27 August 2020
- Hybrid and other mismatches – now closing on 29 August 2020
- Tax treatment of asset holding companies in alternative fund structures – now closing on 19 August 2020

The government announcement can be viewed [here](#).

Covid-19 and corporate tax residence

On 7 April 2020, HMRC published updated guidance on both (1) company residence for tax purposes, and (2) risk of creating a UK permanent establishment (PE) in each case in light of the Covid-19 pandemic.

On company residence HMRC state they are “very sympathetic” to the significant disruption caused by Covid-19 to the location of directors, employees and other individuals. Whilst HMRC express the view that existing legislation and guidance provide flexibility to deal with issues raised by Covid-19 the new guidance helpfully confirms HMRC’s view that occasional UK board meetings, or participation in such meetings from the UK, would not necessarily result in the central management and control (CMC) of a non-UK company becoming located in the UK. The new guidance also (in the specific context of the current health crisis) points out that even if CMC were to become located in the UK, the ‘tie-breaker’ article of any applicable double tax treaty may well have the effect that the company remains non-UK resident.

On UK permanent establishment risk, the new HMRC guidance also adds that (1) whether contracts are “habitually” concluded in the UK will remain a

question of fact and degree, and (2) for a PE to arise in the UK as a result of a non-UK company having a fixed place of business here would require that place of business to have a degree of permanence (with, again and in each case, existing legislation and guidance being deemed by HMRC as providing sufficient flexibility to deal with the problems posed by the Covid-19 pandemic in this area).

Separately, the OECD has published an “analysis” of the impact of Covid-19 on double tax treaties (also looking to address concerns as to the inadvertent creation of a PE due to Covid-19 travel restrictions).

At the time of writing, no official UK guidance has been published as to the effect of Covid-19 related travel restrictions on the place of “belonging” for VAT purposes.

For further information on this, please see our blog [here](#).

The guidance can be read [here](#), [here](#) and [here](#).

Zipvit – questions as to input VAT recovery referred to ECJ by Supreme Court

On 1 April 2020, the Supreme Court¹ referred to the ECJ a number of questions as to whether the recipient of postal services may deduct input VAT in respect of those supplies in circumstances where all parties (including HMRC) had incorrectly treated the supplies as VAT-exempt.

Zipvit carries on the business of supplying vitamins and minerals by mail order.

Both Royal Mail and HMRC understood the services supplied by Royal Mail to Zipvit to be exempt from VAT. Royal

Mail therefore set out no charge for VAT in its invoices to Zipvit and did not account to HMRC for any sum relating to VAT in respect of the supply of the services. HMRC did not expect, or require, Royal Mail to account to them for any such sum.

The ECJ, in *R (TNT Post UK Ltd) v HMRC*², held that the postal services exemption in Article 132(1)(a) of the Principal VAT Directive³ did not apply to postal services such as those (with terms that had been individually negotiated) supplied to Zipvit. In light of the *TNT Post* judgment, Zipvit made two claims to HMRC for deduction of input VAT in respect of the services. These claims were calculated on the basis that the prices actually paid for the services must be treated as having included a VAT element. HMRC rejected Zipvit's claims on the basis that Zipvit had not been charged VAT in the relevant invoices and had not paid that VAT element.

The First-tier and Upper Tribunals, and Court of Appeal considered whether VAT was "due or paid", and whether HMRC could, absent invoices, entertain a claim for input VAT recovery. Any input VAT recovery would be a 'windfall' for Zipvit, on the basis that it paid only the VAT-exclusive price and Royal Mail did not account for VAT to HMRC.

In the Supreme Court, it was common ground that "due or paid" meant due or paid by the trader (Zipvit) to the supplier (Royal Mail), not by the supplier to HMRC. This question, together with the question whether the absence of a VAT invoice is fatal to an input VAT claim, have been referred to the ECJ.

See our blog [here](#) for a full discussion of the case history and the Supreme Court's referral.

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

Digital Services Tax – new HMRC guidance on registration, filing and payment

On 1 April 2020, new guidance was published by HMRC on the digital services tax (DST).

From that date, DST at 2% applies to UK revenues from search engines, social media platforms and online marketplaces, subject to a £25m UK revenue threshold, and a separate £500m global revenue threshold.

The newly-published guidance addresses how to register for, and pay, DST as well as how to file DST returns.

The guidance can be read [here](#), [here](#) and [here](#).

ANY COMMENTS OR QUERIES

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RPC is a modern, progressive and commercially focused City law firm. We have 97 partners and over 700 employees based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.

ENDNOTES

1. In *Zipvit Ltd v HMRC* [2020] UKSC 15.
2. Case C-357/07.
3. 2006/112/EC.