

Tax and legal update

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- register of beneficial ownership; and
- CG50 applications (Section 980 TCA 1997).

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Irish VAT consequences of movement of own goods – do any of your clients' businesses move goods within the European Union (EU)?

Section 3 of the VAT Consolidation Act 2010 (the VAT Act) provides that a charge to Irish VAT arises where a supply of goods is made for consideration by a taxable person acting as such. A taxable person means a person who independently carries out a business in the EU or elsewhere, ie outside the EU.

Many businesses operate across a range of different countries. For commercial or other reasons, a business may decide to move its own products from a warehouse within the EU to a warehouse in Ireland. Albeit no consideration is passing when the goods are moved to Ireland, as per Section 42(2) (a) of the VAT Act, the amount on which VAT is chargeable in relation to these goods is the cost of the goods to the business, ie what did the business pay for the goods in question. To this end, the transfer of the goods is regarded as an intra-community acquisition of the goods in Ireland.

For completeness, albeit outside the remit of this article, in addition to defining what constitutes a supply goods for VAT purposes, Section 19 of the VAT Act also provides some exceptions whereby the transfer of goods is not regarded as a supply for VAT purposes.

VAT treatment of intra-community acquisitions - movement of own goods from within the EU to Ireland

As per Section 32(1) and (2) of the VAT Act, the intra-community acquisition of goods is deemed to occur where, the intra-community dispatch or transportation of the goods ends or in the EU member state which issued the VAT registration number of the acquirer, ie Ireland.

Assuming the business is a taxable person, it must self-account for the VAT arising on the supply. The VAT rate applicable is the local rate in Ireland applying to the good in question.

VAT compliance:

- if the intra-community acquisition takes place in Ireland, VAT charged on the acquisition is shown as output VAT (VAT on sales) in Box T1 of the Irish VAT return;
- assuming the business makes the intra-community acquisition for the purposes of carrying out sales which are subject to VAT, a simultaneous input VAT credit for the same amount may be taken on the Irish VAT return (Box T2 of the VAT return as input/purchases VAT);
- the intra-community acquisition of a businesses' own goods from other EU countries should also be recorded in Box E2 of the Irish VAT return; and
- the Intrastat Arrivals Return should be completed if the threshold is exceeded, ie €500,000 per annum.

Register of beneficial ownership

We have featured the topic of the register of beneficial ownership in past editions of our monthly *tax and legal update*. This month we take a brief look at the proposed central register of beneficial ownership and the information that is expected to be filed by each company and Industrial and Provident Society (IPS) in respect of their Ultimate Beneficial Owner (UBOs) and the requirement to maintain a register of same.

The Department of Finance recently announced that a statutory instrument is expected to be made in the coming months, assigning separate legal responsibility to the Registrar of Companies for the establishment and maintenance of the central register of beneficial ownership of companies and IPSs, which will be in addition to your existing beneficial owners register.

Once the statutory instrument is passed:

- it is expected that there will be an extended time frame for companies and IPSs to file their information without being in breach of their statutory duty to file;
- it is expected that filing will involve entering the details of each beneficial owner through a new online portal. There are no current plans for paper forms and it is expected that there will be no filing fee imposed. It will not be possible to file beneficial ownership data on any existing Companies Registration Office (CRO) form such as your annual return form B1; and
- the information to be filed with the central register in respect of each beneficial owner, who must be a natural person and is expected to include the following:
 - forename and surname;
 - date of birth;
 - nationality;
 - residential address;
 - a statement of the nature of the

interest held by each beneficial owner, for example, controlling shareholder;

- a statement of the extent of the interest held by each beneficial owner, for example, controller of 50% of shares in the company;
- the date on which each natural person was entered in the company's own register as a beneficial owner of the company; and
- the date on which each natural person ceased to be a beneficial owner.

If no individuals are identified as UBOs they shall be entered in the register with the names of the individuals who hold the position(s) of senior managing official(s).

Should you have any queries in relation to the creation of your UBO register and the impending requirement to file same on a central register, please contact a member of our team and we will be happy to guide you through the process.

CG50 applications (Section 980 TCA 1997)

Section 980 Taxes Consolidation Act (TCA) 1997 states an obligation to obtain a CGT clearance certificate (Form CG50A) where assets in excess of €500,000 or residential property over €1 million are disposed of.

The assets included are:

- land and building in Ireland;
- minerals in the state or any rights, interests or other assets in relation to mining, minerals or the searching for minerals;
- exploration or exploitation rights located in Ireland;
- goodwill of a trade carried on in Ireland, and
- shares of a company that derives its value or the greater part of its value from assets 1-3 above (specified assets).

Section 980 TCA 1997 places an obligation on the purchaser to withhold 15% of the purchase price of the asset and remit it to Revenue as Capital Gains Tax (CGT), unless the vendor produces a Form CG50A to the person acquiring the asset.

A Form CG50A can be obtained if **any one of the following conditions** is satisfied:

- the person making the disposal is resident in Ireland;
- no CGT is payable in respect of the disposal; or
- the CGT chargeable in respect of the disposal and any previous disposal, of the asset has been paid.

The following information is required when submitting the application:

- name and address of the tax office which deals with the tax affairs of the vendor;
- name, address and tax reference number of the vendor;
- consideration involved;
- full description of the asset;
- name and address of the person acquiring the asset;
- date of contract for sale;
- date on which the vendor acquired the asset;
- grounds for application, ie resident, no tax payable and tax already paid as appropriate;
- signature of the vendor; and
- capacity in which application is made.

The Form CG50A should be obtained by applying to the vendor's tax office at least five days before the intended closing date of the sale. The Form CG50A, an executed sales contract and cover letter should accompany the application.

In recent months, various anomalies and nuances have arisen in these applications which do not readily fall within the above procedures. Some examples are outlined below.

Disposals where there is no current sales contract

The applicant should provide a note to Revenue outlining the reasons a current sales contract is not in place. The absence of the contract itself should not preclude the issuing of a Form CG50A. A draft contract can be submitted. It will then rest at Revenue's discretion whether to process the application. Usually the Form CG50A will not issue until executed contracts are provided.

Purchaser self-accounts for VAT

Where a purchaser self-accounts for VAT, Revenue will issue a Form CG50A for the 'net' consideration amount only.

Date of acquisition

Where the property being disposed of is acquired pursuant to several transactions, the earliest date of acquisition should be entered on the Form CG50A.

Tax registration number

In order for a Form CG50A to be issued, it is necessary to include the name of the vendor(s) as well as their tax registration number. It is necessary to obtain this number well in advance of the application being submitted. This is to ascertain any instances where the vendor may not be tax registered within the state.

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