

# Quarterly indirect tax update

April 2020

The European VAT framework is constantly being tested by a developing and technological world. As businesses develop unique and innovative ways to provide services to customers, new questions are being asked of the VAT system and how it should apply to these services.

This is apparent in the financial services industry, as is demonstrated by the case of BlackRock Investment Management (UK) Limited vs. Commissioners for Her Majesty's Revenue and Customs (Case C-231/19).

In December 2018, the UK Upper Tribunal (Tax and Chancery Chamber) held that financial technology services provided to portfolio managers could, in principle, benefit from the VAT exemption contained in Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 ("the Principal VAT Directive"), which applies to the management of special investment funds ("SIFs").

The Tribunal would not, however, conclude on the question of whether an apportionment is possible between SIFs and other funds. This question was referred to the Court of Justice of the European Union ("CJEU") for a preliminary ruling.

On 11 March 2020, Advocate General Pikamäe delivered his opinion to the CJEU. It was the opinion of the Advocate General that the common system of VAT must be interpreted as meaning that a single supply of management services, which is provided by an IT platform belonging to a third-party provider to a fund management company and includes both SIF and other funds, does not fall within the scope of the exemption laid down in Article 135(1)(g) of the Principal VAT Directive.

It is important to note, that despite the above, the Advocate General considered that where the services provided through the IT platform were used by a company which solely manages SIFs, the exemption would likely apply.

## Further considerations

The opinion of the Advocate General in this case provides a number of considerations for businesses which supply services of managing funds, including SIFs, and particularly through an IT platform.

While the Advocate General's opinion found that the exemption for SIFs could not apply in this instance, his opinion provides insight on how businesses supplying services to fund managers may structure their service offering to avail of the exemption.

For example, the VAT exemption for management of SIFs could possibly be granted to services supplied to fund managers where those services can be distinctly identified between the management of SIFs and other funds. This could be achieved by having systems in place to allow the collection of detailed data in order to precisely and objectively identify the management services supplied specifically for SIFs.

The final decision of the CJEU is awaited with much interest.



## Commentary on draft text of the Agreement on the New Partnership with the United Kingdom in relation to VAT matters

On 18 March 2020 the European Commission published a draft legal agreement for the new partnership with the United Kingdom. The objective of this protocol is to establish the framework for administrative cooperation between the Member States of the European Union and the United Kingdom. It covers all areas of the negotiations, including trade and economic cooperation, law enforcement and judicial cooperation in criminal matters.

The protocol is designed to assist the various jurisdictions in ensuring compliance with VAT legislation, protecting VAT revenue and recovering claims relating to taxes and duties.

The scope of the agreement includes the following:

- the exchange of information that may help to effect a correct assessment of VAT;
- the recovery of, but not limited to:
  - claims relating to all taxes and duties;
  - administrative penalties, fines, fees, and surcharges; and
  - interest and costs relating to the above.
- the protocol will not affect the application of the rules on administrative cooperation and combating fraud; and
- the protocol will not affect the application for the rules on mutual assistance in criminal matters.

In order to assist with the above matters, each state shall designate a competent authority responsible for the application of the protocol. Further information in relation to the eventual agreed text will be provided in future updates.

## Practical guidance:

### How can you protect your business from becoming involved in VAT fraud?

The purpose of this article is to raise awareness of the risks of participating in transactions connected to VAT fraud, and to provide guidelines to help avoid becoming involved in such illegal transactions. Most importantly, it also highlights the consequences even if the transactions themselves are not unlawful. Where the related transactions are connected with fraud:

- a business could lose its entitlement to a VAT input credit on purchases; or
- it may be liable for Irish VAT on previously zero-rated intra-community supplies.

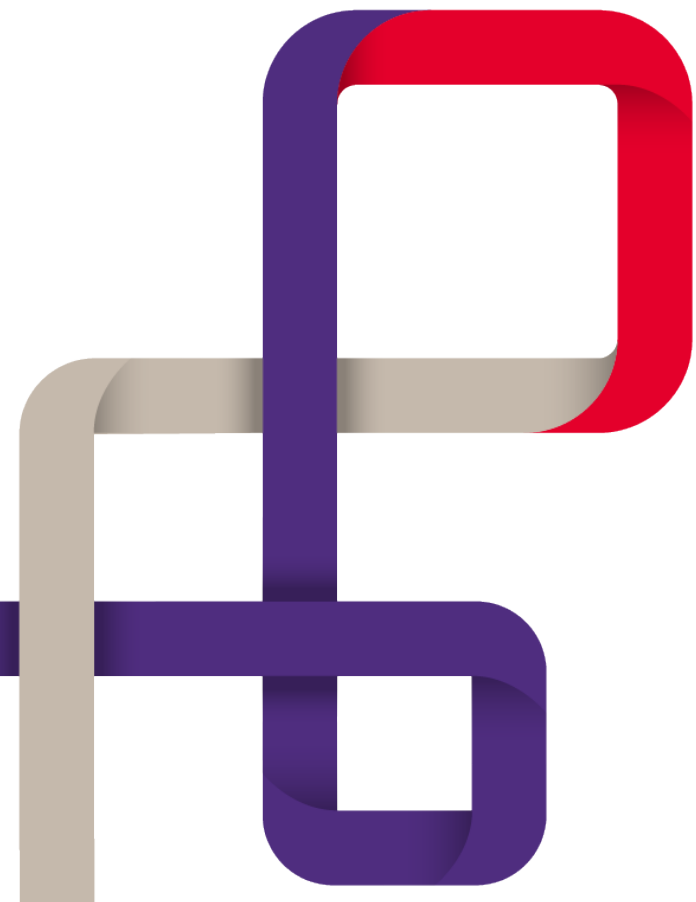
### It is good business practice to undertake due diligence when entering into a business transaction, particularly with an unknown party.

We have set out some examples of reasonable steps a business can take to establish the integrity of its customers, suppliers and supplies:

- obtain copies of the Certificate of Incorporation, if applicable, and VAT registration certificates;
- verify VAT registration details on the EU website if the other party is based in another EU member state;
- obtain signed letters of introduction on headed paper;
- obtain some form of written and trade references and follow through on these to ensure they are genuine;
- obtain credit checks and other background checks from an independent third party;
- make personal contact with a senior officer of the prospective supplier and/or make a visit to their premises whenever possible; and
- obtain the prospective supplier's bank details to check whether:
  - a. payments made by you would be made to a third party; or
  - b. in the case of an import, the supplier and the bank share the same country of residence.

### Your business should be particularly alert to practices that deviate from normal commercial practices within your industry.

Typically, VAT carousel fraud involves more than one jurisdiction and numerous layers to facilitate the alleged movement of goods which in turn lead to the state being defrauded of VAT. This type of fraud involves supplier companies, VAT registered entities, customer companies and transport companies.





### **VAT and internet-based services: What are the main VAT implications of digital services that all Irish businesses should be aware of?**

As a result of social distancing and imposed isolation rules, many of us have turned to the internet to stay in touch with family, attend lectures or simply perform the duties of employment. As such, digital providers of video conferencing services, online tutoring and simple entertainment are attracting a huge increase in demand for their services.

The EU has special VAT rules that apply to supplies of digital services – these include telecommunication, broadcasting and electronically supplied services. However, not all services supplied over the internet are considered “digital services” as certain exceptions may apply depending on human input required etc.

#### **Domestic sales**

Small businesses whose supplies of digital services to customers in Ireland are below €37,500 are exempt from VAT. Once the sales breach this threshold, the business should register and charge Irish VAT at the appropriate rate on sales to Irish customers. The majority of digital services, with the exception of certain e-books and e-newspapers, are taxed at the standard rate of VAT.

#### **EU sales**

Special rules apply to supplies of digital services to customers within the EU:

- Sales to business customers in other EU countries are not subject to Irish VAT (no VAT is charged on sales once customer provides a VAT number) but the seller must report these sales in quarterly VIES returns.
- Sales to consumers (private individuals) are taxed in the country where customer resides. The sellers must register for VAT in those countries and charge VAT at the local rate immediately when the first sale is made. As an exception, where annual sales to EU consumers are less than €10,000, Irish businesses, may treat these sales as domestic supplies, i.e. charge Irish VAT. Once the sales exceed the threshold, the seller must be able to identify the country of residence of the customer and charge VAT at the rate applicable in customer’s country. This applies irrespective whether the business is already registered for VAT in Ireland.

#### **Mini One Stop Shop**

The business should consider availing of Mini One Stop Shop scheme (“MOSS”) under which a single quarterly return reporting all sales of electronic services to EU customers, followed by a single payment, can be made to the Irish authorities. Otherwise an immediate registration for VAT in each EU country where the sales to consumers are made is required. This may create a significant administrative burden: multiple returns in different languages, individual payments and local invoicing requirements to mention few.

**Larger businesses:** Irish businesses whose annual supplies of digital services globally are in excess of €100,000 should be aware that they need to collect two pieces of non-contradictory evidence of the customer’s location and the self-certification by the customer can no longer be relied upon.

**Sales outside the EU:** Since the successful implementation of VAT on digital services by the EU in 2015, many non-EU countries introduced similar rules on sales by non-resident vendors. Some require a foreign vendor to register for VAT when they make the sales to consumers only (e.g. Turkey, Norway, Switzerland) whereas others apply VAT on sales to businesses as well (e.g. South Africa, Russia). Non-compliance with the local rules may be costly where the level of sales is high and therefore such sales should be closely monitored and VAT/GST advice sought as soon as possible.

## Contact

Should you have any queries in relation to the contents of this article or would like to discuss any indirect tax issue, please feel free to contact us.



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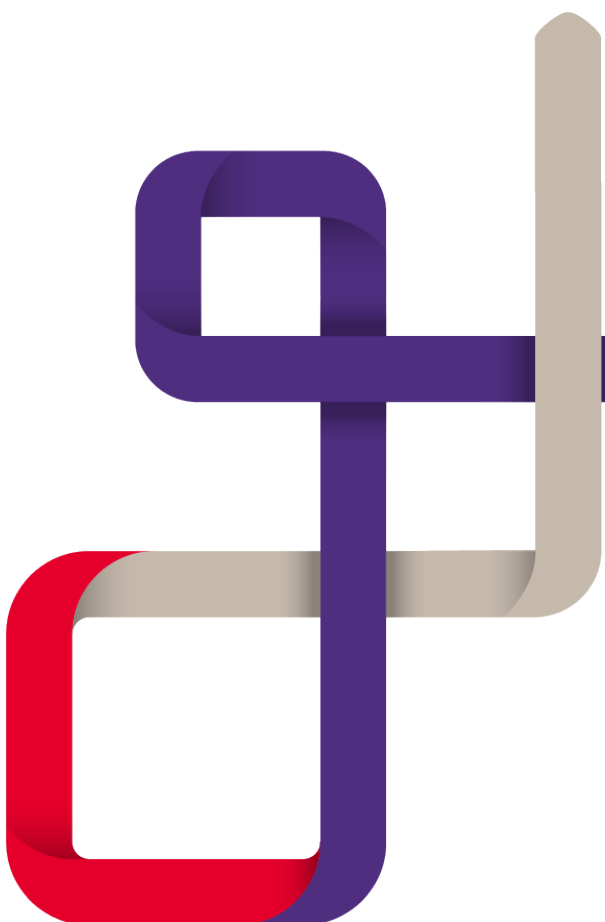
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