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Tax

Quarterly indirect tax update

September 2018

1 VAT for businesses in a Brexit "no deal" scenario

The HMRC have published a briefing document concerning how VAT rules for UK businesses trading with EU countries would be affected, should the UK leave the EU on 29 March 2019 without reaching agreement on the details of a future trading relationship[1].

Current VAT rules pre 29 March 2019

In advance of considering these potential consequences, it is opportune to consider the current VAT rules that will remain in place until **29 March 2019**.

- VAT is charged on most goods and services sold within the UK and the EU.
- VAT is payable by businesses when they bring goods into the UK. There are different rules depending on whether the goods come from an EU or non-EU country.
- Goods that are exported by UK businesses to non-EU countries and EU businesses are zero-rated, meaning that UK VAT is not charged at the point of sale.
- Goods that are exported by UK businesses to EU consumers have either UK or EU VAT charged, subject to distance selling thresholds.
- For services, the 'place of supply' rules determine the country in which you need to charge and account for VAT.

Consequences of the UK leaving the EU without agreement

Accounting for import VAT on goods imported into the UK

If the UK leaves the EU without an agreement, the government will introduce postponed accounting for import VAT on goods brought into the UK. This means that UK VAT registered businesses importing goods into the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border. This will apply both to imports from the EU and non-EU countries and will result in a positive cash-flow benefit for businesses.

UK businesses exporting goods to EU consumers

Distance selling arrangements will no longer apply to UK businesses and UK businesses will be able to zero rate sales of goods to EU consumers. Current EU rules would mean that EU member states will treat goods entering the EU from the UK in the same way as goods entering from other non-EU countries, with associated import VAT and customs duties due when the goods arrive into the EU.

UK businesses exporting goods to EU businesses

VAT registered UK businesses will continue to be able to zero-rate sales of goods to EU businesses but will not be required to complete the European Commission sales lists (VAT Information Exchange System (VIES)).

As UK VAT registered businesses will not be required to complete the European Commission sales list, there will be changes to how these sales are recorded. Those UK businesses exporting goods to EU businesses will need to retain evidence to prove that goods have left the UK, to support the zero-rating of the supply. Most businesses already maintain this evidence as part of current processes and the required evidence will be similar to that currently required for exports to non-EU countries with any differences to be communicated in due course.

Current EU rules would mean that EU member states will treat goods entering the EU from the UK in the same way as goods entering from other non-EU countries, with associated import VAT and customs duties due when the goods arrive into the EU. Individual EU member states may have different rules for import VAT for non-EU countries and import VAT payments may be due at the border when importing goods. UK businesses should check the relevant import VAT rules in the EU member state concerned.

1 https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexit-deal/vat-for-businesses-if-theres-no-brexit-deal

Place of supply rules for UK businesses supplying services into the EU

The main VAT 'place of supply' rules will remain the same for UK businesses.

UK VAT Mini One Stop Shop (MOSS)

Businesses that sell digital services to consumers in the EU will be able to register for the MOSS non-union scheme. MOSS is an online service that allows EU businesses that sell digital services to consumers in other EU member states to report and pay VAT via a single return and payment in their home member state. Non-EU businesses can also use the system by registering in an EU member state.

If the UK leaves the EU with no agreement, businesses will no longer be able to use the UK's MOSS portal to report and pay VAT on sales of digital services to consumers in the EU.

Businesses that want to continue to use the MOSS system will need to register for the VAT MOSS non-union scheme in an EU member state. This can only be done after the date the UK leaves the EU. The non-union MOSS scheme requires businesses to register by the tenth day of the month following a sale.

You will need to register by **10 April 2019** if you make a sale from the 29-31 March 2019 and by **10 May 2019** if you make a sale in April 2019.

EU VAT refund system

UK businesses will continue to be able to claim refunds of VAT from EU member states but in future they will need to use the existing processes for non-EU businesses.

UK business will no longer have access to the EU VAT refund system. UK businesses will continue to be able to claim refunds of VAT from EU member states by using the existing processes for non-EU businesses. This process varies across the EU and businesses will need to make themselves aware of the processes in the individual countries where they incur costs and want to claim a refund.

Finally

If the UK leaves the EU on 29 March 2019 without a deal, the government's aim will be to keep VAT procedures as close as possible to what they are now. This will provide continuity and certainty for businesses. However, if the UK leaves the EU with no agreement, then there will be some specific changes to the VAT rules and procedures that apply to transactions between the UK and EU member states.

2 Marle Participations SARL (C-320/17) - Recovery of VAT by a holding company on the costs relating to the acquisition of subsidiaries

The Court of Justice of the European Union (CJEU) recently issued its decision in the case of Marle Participations SARL (C-320/17) which concerned the recovery of VAT by a holding company on the costs relating to the acquisition of subsidiaries. The judgment is positive and widens the concept of direct or indirect involvement in management by holding companies in subsidiaries. The case concerned the entitlement of a holding company, *Marle Participations*, to deduct input VAT on services relating to restructuring costs involving the sale and purchase of securities in subsidiaries. The only services Marle Participations provided to these companies related to the letting of a building to be used as a new production site. The letting was not VAT exempt as it was subject to VAT under an option to tax.

The Court reiterated the principles set out in the cases of Cibo Participations (C-16/00) and Larentia + Minevra and Marenave Schiffahrt (C-108/14 and C-109/14), ie while the mere acquisition and holding of shares in a company is not an economic activity for VAT purposes with no right of VAT recovery on associated costs, a holding company which has a direct or indirect involvement in the management of its subsidiaries by supplying services which are subject to VAT such as financial, commercial and technical services has an entitlement to include the associated share acquisition costs in its general expenditure for the purpose of determining the recoverable VAT on such costs. The Court also noted that the earlier case-law examples of activities, such as administrative, accounting, financial, commercial, information technology and technical services, constituting involvement by a holding company in its subsidiaries, are not exhaustive.

The Court held that expenditure on the acquisition of the subsidiaries to which the holding company granted lettings are subject to VAT and should be regarded as general expenditure with the VAT on the costs being recoverable in full.

3 HMRC's Making Tax Digital (MTD) programme - Is your business registered for UK VAT?

From **1 April 2019**, all UK VAT registered businesses with a turnover above £85,000 will be required to submit VAT returns electronically using an appropriate software package compatible with HMRC's Application Program Interface (API). Businesses will be required to maintain digital records in order to create a clear digital 'journey' or 'digital link' to support their VAT regime.

For many businesses, upgrades or possibly even completely new reporting systems or software will be a necessity in the near future. HMRC envisage that MTD will narrow the tax gap by removing mistakes arising from the incorrect manual adjustments made in VAT workings. The aim is to help businesses to evaluate the robustness of their existing VAT systems and ensure that they can cope with the new MTD digital link requirements.

Businesses should identify any issues that MTD will impose whether these are system changes or staff changes. A clear focus on the necessary steps required to become MTD compliant should be made a priority in all businesses, regardless of the scale. In particular, businesses with more complex transactions will demand particular software adapted to their specific needs. Third party agents must ensure they collaborate with their clients to guarantee the same goals are reached.

4 Foreign VAT reclaims – 30 September 2018 deadline is fast approaching

An Irish VAT registered trader who incurs VAT in another EU member state can claim a refund of foreign VAT by submitting a claim called an Electronic VAT Refund (EVR) application available on Revenue Online System (ROS). In addition, foreign traders that have incurred Irish VAT can make a reclaim for Irish VAT incurred via an EVR claim.

Reclaim conditions for Irish VAT reclaim

To be eligible to file an EVR claim, the following conditions must be satisfied:

- the applicant has no establishment in Ireland; and
- the purchased goods must not be for use within Ireland or be hired motor vehicles for use within Ireland.

Applicants may submit a maximum of five applications in a calendar year.

Refundable Irish VAT

The goods and services purchased in Ireland, on which the reclaim is made, must be goods and services that would have had VAT applied if the business was conducted in Ireland.

In Ireland, vehicles registered after 1 January 2009 with a level of CO2 emissions of less than 156g/km may reclaim a maximum of 20% of the VAT incurred. At least 60% of the use of the vehicle must be for business purposes only.

Non-refundable Irish VAT

Irish VAT **cannot** be recovered on:

- petrol;
- hiring of passenger motor vehicles;
- food, drink, accommodation or personal services; and
- entertainment expenses.

Deadline

VAT incurred during the 2017 period must be claimed by **30 September 2018.**

If the **reclaim relates to foreign VAT**, the reclaim is then forwarded by Revenue to the appropriate foreign EU tax authorities for review.

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