

Quarterly indirect tax update

September 2019

1 “Two-tier” VAT registration

Revenue has introduced a “two-tier” VAT registration concept by applying a “domestic-only” or a “intra-EU” status for VAT registrations with effect from 15 June 2019.

Domestic only status

Taxpayers who are not undertaking any intra-EU trade should apply for “domestic-only” status. A simplified registration process will be available for applicants applying for the “domestic-only” status and such registrations will be processed by Revenue promptly in the vast majority of cases.

However such registration numbers will not appear as valid on the European Commission’s online VIES database. If a taxpayer registers for domestic only purposes, and subsequently wishes to engage in intra-EU trade, they will be required to submit an application to obtain such status.

Intra-EU status

Taxpayers applying for “intra-EU” status, which will also cover domestic activity, will be required to provide additional information on their VAT registration application form. In particular, there will be an increased focus on the due diligence process.

Revenue’s published guidelines on the updated VAT registration process state that having “intra-EU” status will result in an automatic VIES reporting obligation. If this is applied in practice, and indeed to all those currently registered for Irish VAT, it will add to the compliance burden faced by taxpayers. While only outbound EU supplies need to be recorded on periodic VIES statements, any taxpayer registered with “intra-EU” status will face an automatic VIES registration.

Revenue’s published guidelines do not confirm whether taxpayers can choose to de-register for VIES in the instance where the taxpayer only receives inbound purchases from the EU, and does not make any outbound supplies.

Will the changes affect existing VAT registrations?

All taxpayers currently registered for Irish VAT will be automatically treated as having “intra-EU” status. There is no requirement for such taxpayers to contact Revenue.

However, it is still unclear whether taxpayers with live VAT registrations granted prior to the implementation of the two-tier registration process will receive an automatic VIES registration.

Limited application of domestic-only VAT registration

Given that Ireland is a small open economy with most Irish businesses engaged in some level of activity with EU based suppliers and/or customers it is envisaged that domestic-only VAT registrations will be of limited application. Where such a registration is put in place initially it is likely that an intra-EU registration will be required at some point in the future.

2 Cost Sharing exemption - no longer available to companies in the Financial Services sector

Revenue have confirmed that the Cost Sharing exemption will no longer be available to companies in the financial services sector, following the judgements of the CJEU in the cases of DNB Banka, Aviva and Commission v Germany.

This exemption is contained within Paragraph 3(1) of Schedule 1 of the VAT Consolidation Act 2010 which states:

“the supply of services by an independent group of persons (being a group that is an independent entity established for the purpose of administrative convenience by person whose activities are exempt from, or are not subject to, tax) for the purpose of rendering to its members the services directly necessary to enable them to carry out their activities, but only if the group recovers from its members the exact amount of each member’s share of the joint expenses”.

Revenue have indicated in their guidance that the exemption outlined above must be strictly interpreted and therefore will only apply where the activities carried out are in the public interest.

Those businesses in the financial services sector that have previously availed of the exemption either through the setting up of direct Cost Sharing Groups or through the use of a European Economic Interest Group (EEIG) should review the impact of the removal of the exemption and review what alternative arrangements can be put in place.

3 VAT deductibility of general costs for holding companies

Revenue have recently confirmed its view in relation to Irish VAT deductibility treatment for holding companies. The publication of such guidance has been greatly anticipated and it follows lengthy discussions between Revenue and various stakeholders regarding the VAT rules in this area.

A VAT deduction can be taken by a holding company on services acquired provided there is a direct and immediate link:

1. between the costs incurred and the output transaction which is taxable of qualifying in nature; or
2. to the holding company's economic transactions, or form part of the general costs linked with its overall economic activities.

A holding company can incur general costs such as group legal fees, stock exchange listing fees, and regulatory fees. Determining whether a link exists between general costs such as the above and the holding company's economic activity is an objective evaluation.

The position can be summarised as follows:

- passive holding company - not entitled to deduct any VAT in respect of general costs on the basis that there is no economic activity that would give rise to a right of deduction;
- active holding company - entitled to deduct VAT in respect of share acquisition costs where there is a direct and immediate link either to the provision of such services or to its economic activity, or those costs constitute general costs linked with the holding company's overall economic activity. Revenue has confirmed that where the level of management fees charged to the subsidiary or subsidiaries is less than the acquisition costs incurred by the holding company this should not, in and of itself, impact adversely on the VAT deductibility of such costs; or
- mixed holding company - for holding companies which are involved in both passive and active economic activities, only costs which have a direct and immediate link with the company's active economic activity can be taken as a VAT input deduction. For costs which are related to both the passive and active economic activity, an appropriate apportionment should be made.

Clarification of the scope of electronic publications

Revenue have recently provided guidance in determining what constitutes an e-newspaper, e-periodicals and an e-book for VAT purposes. This was prompted by the introduction of the 9% VAT rate in Finance Act 2018 to e-publications to align it with that of printed newspapers. As of 1 January 2019, the following e-publications are subject to VAT at 9%:

- e-newspapers, e-periodicals, e-books and the electronic publications of:
 - audio books, brochures, leaflets and similar publications;
 - children's pictures, drawing or colouring books;
 - music printed or in manuscript form;
 - maps, hydrographic and similar charts; and
 - catalogues, including directories and similar printed matter.

However, certain e-publications are excluded from benefiting from the second reduced rate and as such are liable to VAT at the standard rate of 23%:

- e-publications wholly or predominantly devoted to advertising; and
- e-publications which consist wholly or predominantly of audible music or video content.

Revenue have confirmed as follows:

- e-newspaper: An e-newspaper is the electronically supplied publication of its printed equivalent. Additional content may appear online which does not appear in the print form such as an update as a news story develops, however where the additional content does not produce a fundamentally different product to the printed version then it may be considered an e-newspaper;
- e-periodical: A periodical is a magazine, scholarly journal, newspaper or newsletter being publications that are published at regular intervals. In general, an e-periodical is the electronically supplied publication of its printed equivalent; and
- e-book: In general, an e-book is the electronically supplied publication of its printed equivalent.

Subscriptions to online research and library databases:

- it should also be noted that subscriptions for access to online research and/or library databases are subject to VAT at 23% VAT.



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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