Quarterly indirect tax update

April 2021

2021 E-commerce VAT package

The e-commerce VAT package, delayed by the pandemic, is due to come into force on 1 July 2021. As of 1 April 2021, businesses wishing to avail of the benefits provided for by the new One Stop Shop ("OSS") schemes can pre-register with the Irish Revenue.

The changes contained in the package will have a significant impact for any business selling goods and/or services to consumers (i.e. private individuals and non-VAT registered persons) across the EU. The changes also affect marketplaces and platforms facilitating such sales where the value of goods is below €150.

B2C services

The VAT package expands the scope of the MOSS scheme currently applicable to telecommunications, broadcasting and electronically supplied services. As of 1 July 2021, the new OSS scheme will apply to all B2C services.

Non-EU businesses that provide services to EU consumers can register for the Non-Union OSS in order to report all EU B2C sales (at the applicable rate) in a single VAT return. Similarly, EU businesses that supply services to consumers in other EU Member States, where they have no establishment, can use the Union-OSS scheme to account for VAT due in other EU Member States.

EU distance sales

As a reminder, the VAT package removes existing "distance sales" thresholds. Once the value of all goods (and certain services) sold to consumers in other EU Member States in the previous 12 months reaches €10,000, the business will need to account for VAT at the rate applicable in the country where the delivery of the goods ends. Consequently, many businesses selling goods to consumers in multiple EU countries where those values are relatively low, may now find themselves liable to VAT in all EU countries where their customers reside.

All businesses engaged in distance sales should review the level of goods dispatched to EU consumers in the past 12 months and consider if they need to charge local VAT as of 1 July 2021.

In order to avoid multiple VAT registrations, the business may register under the new Union-OSS scheme. The scheme is available to EU and non-EU businesses and marketplaces who are engaged in EU distance sales (which includes goods shipped to/from Northern Ireland but exclude the rest of the UK). EU businesses should register with the tax authorities where they are established while the non-EU traders need to seek registration in the EU Member State from which the goods are shipped to consumers.

Main benefits of using Union-OSS include a single simplified quarterly return and single VAT payment. Where the business is already registered in some EU Member States it may consider de-registration and apply to use Union-OSS.

Import distance sales

The package also removes VAT exemption applicable to goods imported into the EU of a value not exceeding €22. All goods brought into the EU will now be subject to import VAT regardless of their value. The concept of "import distance sales" applying to goods shipped directly from outside the EU to EU consumers, is also introduced.

Business who engage in import distance sales will now need to charge VAT on the sale of these goods at the rate applicable in the country of the consumer. They can avoid multiple registrations by applying for a single VAT registration under Import-OSS ("I-OSS"). When the scheme is used, the business will be exempt from import VAT and will only need to file a single monthly return in respect of all sales made to EU consumers.

The scheme can be used by EU and non-EU businesses as well as marketplaces. However, a non-EU business will need to appoint an EU established intermediary to use I-OSS.

Marketplaces

New obligations will apply to marketplaces and other electronic interfaces that "facilitate" the supplies of goods to EU consumers, i.e. enable consumers to purchase goods through an electronic interface. Marketplaces will be deemed to purchase and sell the goods themselves. These deeming provisions will apply to EU distance sales where the vendor is a non-EU resident and to imported distance sales of goods below €150.

Marketplaces can register under Union-OSS (to account for VAT on EU distance sales) and/or I-OSS (to account for VAT on imported distance sales).

Summary

The OSS schemes are optional but considering the administrative burden that multiple registrations can pose – multiple returns in different languages, invoicing obligations, different taxable periods – they are likely to simplify the overall VAT compliance required of businesses. However, some businesses may need to register for multiple OSS schemes when they are engaged in different types of supplies to EU consumers.

If you are an e-commerce business or marketplace, it is opportune to consider your options and consider registering for the OSS scheme.

VAT implications of company purchases for both business and personal use: Are you prepared for a potential Revenue Audit?

One key aspect of recent audits is the Irish Revenue's scrutiny of VAT issues surrounding the personal use of company assets and expenditure by a company on personal items. Under VAT legislation, VAT is recoverable on purchases used for a company's taxable supplies (or qualifying activities as defined). Therefore, VAT recovery is not permitted on purchases for the personal use of the employee or the director. Any VAT related to such personal expenditure is disallowed for VAT purposes.

Examples

For example, a company purchases a bike under the bike to work scheme for an employee who will use the bike entirely for their journey to and from work and home. The VAT incurred on this bike is not recoverable by the company.

Some purchases will be for mixed business and personal use and care should be taken here that an appropriate VAT restriction is applied to these purchases. For example, if company mobile phones are offered to staff whom are permitted to make personal calls on these phones, VAT recovery should be restricted on the purchase of the phone and the monthly plan.

Personal use of company cars is another area where the mixed use VAT recovery issue would be prevalent. Where the employee is granted exclusive use of a company car and they are permitted to keep the car for use after work and at weekends, then a portion of the input VAT should be disallowed.

Recent case law

A recent case of the Court of Justice of the European Union ("CJEU"), on the issue of company cars found that a liability to sales VAT may even arise with company cars. In summary, the facts of the case were as follows;

- an employee was given a company car and permitted to use if for both work and personal travel;
- no other employees were permitted to use the car;
- the period of use was for more than 30 days; and
- the employee took a salary sacrifice in order to gain this privilege.

Under this scenario the company was held to be making a supply of car rental services to the employee and should have operated VAT as if it were a sale by the company to the employee. It should be noted that this treatment would apply regardless if the company owns the car or is leasing the car from a third party. The important point from this case is that the employee took a salary sacrifice in order to get this privilege and this was seen as consideration for the supply.

What should businesses do now to ensure compliance?

Companies should review their position in this respect as this is currently a hot topic in Revenue interventions. Grant Thornton can assist in determining the most appropriate recovery amount for VAT on company purchases. We can perform VAT reviews and health-checks to ensure that a future Revenue Audit runs smoothly.

Is an entity precluded from adjusting wrongly issued invoices and the associated overpaid output VAT following a tax investigation?

In a recent CJEU case , a company established in Lithuania made fuel cards available to Lithuanian transport companies and allowed those transport companies to use the fuel cards to refuel its vehicles at certain service stations located in Poland. The company would issue invoices indicating an amount of VAT for the supply of fuel to the Lithuanian transport companies as the company considered its commercial activity was the purchase of fuel from Polish fuel stations (for the purpose of reselling it to Lithuanian transport companies, by way of fuel cards).

Following an investigation, the Polish tax authorities concluded that it did not agree with the VAT treatment of the company's commercial activity. The tax authorities considered that fuel was supplied directly by Polish service stations to Lithuanian transport companies. While this fuel was acquired by the Lithuanian transport companies by means of fuel cards purchased from the company, the Lithuanian transport companies had complete freedom of choice on the acquisition, including quantity and type of fuel.

Determination by local tax authorities

On this basis, the tax authorities determined that the company's actual activity was therefore the financing of the purchase of fuel at Polish service stations by Lithuanian transport companies using fuel cards, constituting a financial service exempt from VAT in Poland. Given that a tax investigation had taken place, the Polish tax authorities determined that the company was not entitled to revise the invoices and make an adjustment for VAT overpaid to the tax authorities on its supply of services. Additionally, the company was not entitled to benefit from the right to deduct input VAT in respect of the invoices issued by the service stations given it conducted a VAT exempt activity.

Decision by the CJEU

The matter was referred to the CJEU where it was held that the company was not precluded from adjusting the wrongly issued invoices and VAT overpaid as this would breach the principles of proportionality and fiscal neutrality. Denying an adjustment of output tax would result in double taxation when taking into account the denial of input VAT recovery. The Court further considered that had the company invoiced correctly, the Lithuanian transport companies would have received VAT invoices from the service stations and would have recovered the VAT charged accordingly.

Application for Irish businesses

This case demonstrates the significance of the principles of proportionality and fiscal neutrality in EU VAT law. The CJEU in this instance considered that the determinations and treatment by the Polish tax authorities were contrary to those principles and therefore the Court held in favour of the applicant company.

In Ireland, where a VAT inspection results in determining a taxpayer has incorrectly treated its activity from a VAT perspective, the taxpayer will likely be subject to penalties or further assessment. The taxpayer will generally not be denied the ability to correct or adjust the VAT treatment of its transactions, but rather, will likely be required to make these adjustments by the Irish Revenue following inspection to correct the historical position.

Importing vehicles from Great Britain and Northern Ireland post Brexit – increased costs for the Irish customer

Importing a vehicle from Great Britain

Following the withdrawal of the UK from the European Union, imported vehicles from Great Britain is treated as an import from a third country, i.e. a non-EU country. If a vehicle is imported from Great Britain into Ireland, the importer is required to complete a customs declaration prior to import and the importer is liable to:

- customs duty (unless preferential treatment applies);
- Vehicle Registration Tax (VRT); and
- VAT at the standard rate (23%).

Customs Duty

If the vehicles are of UK origin, then a 0% tariff rate applies. However, vehicles of EU origin that were in use in the UK and that were subsequently imported into Ireland from Great Britain will not be eligible for the 0% tariff rate as they will not qualify as UK origin under the rules of origin.

To import a car of EU origin from Great Britain into Ireland, a customs declaration must be completed. Customs duty of at least 10% applies (can be higher depending on the vehicle). The customs value is the invoice price plus the cost of transport and insurance.

VAT at the standard rate is calculated on the customs value plus customs duty.

Importing a vehicle from Northern Ireland

Under the Ireland/Northern Ireland Protocol, Northern Ireland will continue to apply and adhere to EU rules in relation to trade in goods. This means that there are generally no customs formalities, including customs declarations or payment of tariffs on trade between Ireland and Northern Ireland.

However, the UK recently introduced significant changes to the UK VAT margin scheme for used cars imported from Great Britain into Northern Ireland. These changes are not in compliance with provisions of EU law on VAT that apply in Northern Ireland as per Article 8 of the Protocol. As such, used cars that are imported into Northern Ireland from Great Britain after 31 December 2020, are not considered single market goods under UK rules and cannot be brought into Ireland as if they were. Therefore, when used cars are brought into Ireland, they are liable for VAT and customs duty on the same basis as used cars brought into Ireland from Great Britain.

What does this mean for the Irish purchaser?

As customs duty is an absolute cost for both private individuals and VAT registered businesses, these changes will represent significant additional costs for both Irish consumers and business seeking to acquire these type of vehicles from either Northern Ireland or Great Britain. The Irish motor industry may gain a significant boost from these changes as Irish customers are now more likely to purchase locally given the likely price saving.

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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