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Tax

Quarterly indirect tax update

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1 VAT 'quick fixes'

The European Council has approved proposals for four "quick fixes" concerning VAT to simplify international trade. The "quick fixes" will be effective from **1 January 2020** and are expected to have considerable implications for businesses making intra-Community supplies.

Call-off stock

The first fix relates to the VAT treatment of so called "call-off" stock. Under existing VAT legislation, where goods are transferred by a business to another member state and the goods are held for later "call-off" by a specific customer, the business supplying the goods is deemed to supply them when the transport of the goods takes place and to simultaneously acquire them in the member state of destination. When the goods are "called-off" by the customer, the supplier is then deemed to make a domestic supply of goods in the other member state. This requires the supplier to register and account for VAT in the other member state. Under the new proposals, provided that certain conditions are met, the transfer of the goods will be deemed to be a **zero-rated supply in the country of departure followed by an intra-Community acquisition by the purchaser.** While most member states currently operate simplification measures for call-off stock these new measures will ensure uniform treatment throughout the EU.

Chain transactions

The second fix relates to chain transactions. A typical chain transaction consists of a supply of goods from A to B and then from B to C, with the parties located in different member states and a single movement of goods from A to C. The intra-Community transport of goods can only be attributed to one supply in the chain. This means that the zero VAT rate for intra-Community supplies only applies to one supply. The other supplies are local (domestic) supplies of goods. In many cases this can lead to debates about which supply in the chain should be attributed to the intra-Community transport of goods.

Under the new rules, the **intra-Community supply is attributed to the link in which the goods are supplied to the taxable person that arranges the intra-Community transport.** This is usually the initial link. However, if intermediary B, which arranges the transport, provides supplier A with a VAT identification number of the EU member state of dispatch of the goods. In that case, the intra-Community transport of goods is attributed to the link between the taxable person arranging the transport and its customer, in this example the supply made by B to C.

Intra-Community supplies of goods- requirement to obtain the customer's VAT number as a substantive condition

The third fix relates to obtaining the **customer's VAT identification number in relation to the zero-rating of the supply of goods in an intra-Community transaction.** Currently this is a substantive condition rather than a formal requirement.

From 1 January 2020, member states will be able to refuse the zero rating for an intra-Community supply if the supplier does not obtain the customer's VAT identification number. It is also the case that if the supplier does not comply with their VIES listing obligation, the zero rating will not apply.

Intra-Community supplies of goods- evidence of transport required

The fourth fix relates to the zero rating of intra-Community transactions and in particular the condition that the goods have to be transported or dispatched from one member state to another.

Businesses must have **two items of non-contradictory evidence** confirming the transport or dispatch of the goods. The two items of evidence must be furnished by two parties who are independent of each other and of the vendor and acquirer.

The vendor should also be in a possession of a written statement from the person acquiring the goods stating that the goods have been transported or dispatched and referring to the member state of destination of the goods. The person acquiring the goods must furnish this documentation to the vendor by no later than the 10th day of the month following the supply.

Accepted evidence of the transport or dispatch of goods is a signed CRM document, bill of landing, airfreight invoice or invoice from the carrier of the goods. Other documents could be an insurance policy with regard to the transport of the goods, official documents issued by a public authority, such a notary, confirming the arrival of the goods or a receipt issued by a warehouse keeper in the member state of destination confirming the storage of the goods.

Who will be impacted?

Businesses making intra-Community supplies of goods and logistics providers need to consider how the new VAT rules could affect their transactions with effect from 1 January 2020.

Prompt action is essential, given that organising the administrative and order processes as well as the ERP systems will require time and resources.

2 EU VAT case law updates - Termination payments

In MEO (C-295/17), the Court of Justice of the EU ("CJEU") ruled that payments which a telecom company was contractually entitled to receive as a result of the early termination of a customer's contract were subject to VAT. The CJEU rejected the argument that they were non-vatable compensation.

In the facts of the case, the telecom company offered contracts under which customers paid lower prices in return for agreeing to a minimum contract period. The contract provided that where the customer defaulted and his/her contract was terminated, the customer owed a lump sum termination amount equal to the net monthly instalments for the number of remaining months in the contact period. According to the CJEU, this termination payment was not a compensation for damages and therefore, was subject to VAT.

While the judgment is not yet available in English, the CJEU's decision appears to be based on the termination amount being specified in the contract and the fact that the telecom company ended up in the same position as if the contract ran for the full duration.

It is still possible that payments which amount to compensation can be outside the scope of VAT, but this judgment highlights that the exact fact pattern and contractual arrangements are important in determining the VAT treatment.

3 EU VAT case law updates - Conditional payments

The Baumgarten case (C-548/17) considers when VAT becomes due in a scenario where there are multiple payments which are conditional on future events. The default rule is that VAT becomes due on a supply of goods or services when they are supplied. However, there are exceptions, which allow for VAT to be due at a later date where successive payments are made in respect of those goods or services.

In this case, the CJEU ruled that the supply of a service by a football agent to football clubs which was paid for in later instalments which were conditional upon future events, became subject to VAT when the payments were made rather than when the service was initially performed.

Baumgarten was a professional agent which placed professional footballers with German football clubs. When Baumgarten successfully placed a player with a football club, it became entitled to commission from that club, provided that the player subsequently signed an employment contract and held a licence issued by the German Football League. This commission was paid to Baumgarten in instalments every six months after the player joined the club, for as long as the player remained under a contract with that club and held a German Football League licence.

While the service of placing the footballer took place day one, it was paid for over the duration of the player's contract and the exact amount due was conditional. The taxpayer argued that VAT should be payable on each payment as and when it became due. The German Tax Authorities, however, argued that VAT was due upfront on the full amount that would be due over the term of the contract. The CJEU decided that as the full amount of the payments to be made is condition, the VAT on those payments became due on the expiry of the periods to which the payments made relate.

4 UK VAT considerations - Making tax digital for VAT

From 1 April 2019, Making Tax Digital (MTD) will become compulsory for most UK VAT registered businesses with a taxable turnover above the VAT registration threshold. Currently the VAT registration threshold in the UK is £85,000. Affected businesses will no longer be able to submit their VAT returns through HMRC's online portal. VAT return data should now be submitted digitally using software compatible with HMRC's Application Programming Interface (API) platform. Affected businesses are also required to maintain digital records and a digital VAT account.

A further change which is due to take effect from 1 April 2020 requires businesses to maintain a clear digital "journey" or "digital links" between their accounting systems and the software used to prepare and submit their VAT returns. A "digital link" is one where the transfer or exchange of data is made electronically without manual intervention. Transferring data manually within or between different software products (including copy and paste) is not permitted. This does not prevent businesses from continuing to prepare their VAT return calculations in a spreadsheet program such as Excel, as software is available which acts as a digital "bridge" between the spreadsheet and HMRC's API.

Businesses can continue using agents to submit their VAT returns under MTD. Agents may also retain digital records on behalf of clients. HMRC confirmed that emailing a spreadsheet to a tax agent, or transferring records onto a portable device is considered as a "digital link".

A six month deferral until 1 October 2019 is available for more complex businesses such as trusts, not for profit organisations that are not set up as a company, VAT divisions, VAT groups, certain public sector entities, local authorities, public corporations, traders based overseas, and those required to make payments on account and annual accounting scheme users.

Contact

Please do not hesitate to contact a member of our indirect tax team to discuss any VAT queries you may have.

Jarlath O'Keefe
Partner
T +353 (0)1 680 5817
E jarlath.okeefe@ie.gt.com

Marian Lee
Director
T +353 (0)1 680 5939
E marian.lee@ie.gt.com

Kevin Devenney
Director
T +353 0)1 433 2438
E kevin.devenney@ie.gt.com

Tom O'Reilly
Manager
T +353 (0)1 680 5730
E tom.oreilly@ie.gt.com

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