VAT ADVISORY SERVICES LTD

POST-BREXIT VAT: A SUMMARY OF THE MAIN IMPLICATIONS FOR NON-UK BUSINESSES

Brexit in Summary

The end of the post-Brexit transitional period on 31 December 2020 brought about a scenario in which the UK (except Northern Ireland) is no longer in any respect part of the EU. Certain consequences flow from that outcome.

The key point about Brexit remains that, in almost all respects from a VAT point of view, the UK should now be treated as an independent country not forming part of the EU. For non-EU suppliers of goods and services to the UK, this means that there is no change to the arrangements; for businesses in the EU, dealings with the UK are now essentially the same as dealings with any other non-EU jurisdiction, such as Switzerland, Norway or the US.

Even for EU-based suppliers of goods and services, there are therefore no fundamentally new rules to be understood or implemented; it is simply a case of applying to transactions with the UK rules and procedures that have been in place for many years covering transactions involving other non-EU jurisdictions.

From 1 January 2021, many overseas sellers of goods to consumers in the UK, which are delivered from outside the UK, are subject to a different treatment from that which applied previously; this provision is not a result of Brexit, but of changes to specific UK rules (which will be mirrored by changes to the rules in the EU for such transactions from 1 July 2021).

With this last exception, most of the changes in 2021 affect EU-based suppliers of goods and services to UK customers, rather than non-EU-based suppliers. Unless it is a matter of a movement of goods arriving in Northern Ireland from an EU country or leaving Northern Ireland for an EU country, EC sales have become exports and acquisitions have become imports.

Business-to-Business Shipments of Goods into the UK

Except where goods directly enter Northern Ireland from an EU country, any goods arriving in the UK for a business customer are now imports in the UK and exports for the overseas supplier. As exports, these sales will be eligible to be zero-rated by the supplier, regardless of the VAT status of the customer. For EU-based suppliers, therefore, it will no longer be necessary to obtain the UK customer's VAT number in order to zero-rate the sale. Such suppliers will need to ensure that they obtain evidence of export according to the requirements of the tax authorities in their own jurisdiction.

Business-to-Business Shipments of Goods from the UK to Other Countries

Except where the goods leave Northern Ireland directly for an EU jurisdiction, any goods leaving the UK are now exports. In consequence, they will become imports in the country of arrival. Subject to the rules in the country of arrival, this will in most cases mean that import VAT is payable by the customer at the time of importation. For customers in EU countries, this may, depending on the manner in which import VAT is accounted for there, represent a cash flow disadvantage over the treatment of such purchases as acquisitions. Instead of the VAT being declared to the tax authorities through the VAT return, it may become payable at the port of entry, to be claimed later when a VAT return is submitted. Duty and corresponding administration fees may also be incurred, depending on the classification of the goods in the member state that the goods are being imported to. Importers are advised to check the details of this with their local chambers of commerce or customs authorities.

Northern Ireland

Under the Northern Ireland Protocol, the province has a special status, as a result of which it is treated as wholly part of the UK, but also, for certain VAT purposes, as part of the EU. Where goods move directly between Northern Ireland and any EU jurisdiction, the sale and/or purchase is capable of being treated in the same way as such movements prior to 1 January 2021. Businesses established in Northern Ireland have been given a new prefix to their UK VAT numbers – XI – which must be used in place of the former prefix (GB) when selling to or buying from VAT-registered parties in EU countries.

Triangulation

Triangulation refers to the delivery of goods directly by supplier A to their customer's customer C, but invoiced to their immediate customer B, who in turn invoices C, and where all three parties are located in three different EU member states. In such circumstances, both A and B may zero-rate their supplies, notwithstanding the fact that these transactions are not true EC sales as defined. Unless they are established in Northern Ireland, UK businesses can no longer function as the middle party (B) is such an arrangement. In turn this means that, where a supplier in one EU country ships goods to another EU country, but invoices their customer in the UK, who in turn invoices the end recipient, the first supplier cannot zero-rate their sale unless the UK business has a VAT registration in the member state into which the goods have been shipped.

Non-UK Businesses Shipping their own Goods into the UK

A non-UK business may ship goods into the UK to be held prior to sale to UK businesses or consumers. Non-EU suppliers have always been required to register for VAT in the UK and charge UK VAT when selling such goods. EU-based businesses must also do so now. From 1 January 2021, if such a sale is facilitated by an online marketplace (OMP), such as Amazon or eBay, the OMP must account to HMRC for the VAT due. The business actually selling the goods, being VAT-registered in the UK and having claimed back any VAT incurred on importation, will be treated as making a zero-rated supply of the goods to the OMP at the point of sale. One significant improvement to the provisions relating to overseas businesses bringing goods into the UK was made on 1 January 2021. This is known as "postponed accounting for import VAT" and from that date allows businesses VAT-registered in the UK both to declare and to claim import VAT through their VAT returns rather than having to pay it at the port of entry and wait to recover it through their VAT return.

Low-Value Goods Sold to Consumers in the UK
From 1 January 2021, new rules have been introduced relating to lower values of goods shipped into the UK where the customer is not a business. This will affect many mail order suppliers. An individual consignment of retail goods up to a value of £135 (excluding VAT and any delivery costs identified to the customer) enters the UK VAT and duty free, but the overseas supplier (or a marketplace platform acting on their behalf) will be obliged to account for VAT to the UK tax authorities, at the rate in force in the UK for the type of goods involved. If such a sale by an overseas business is facilitated by an online marketplace (OMP), then the OMP will be required to account for the VAT due, passing the net value back to the seller less their commission. Overseas sellers who sell directly to UK customers will require a UK VAT registration in order to account for the VAT. If packages are dispatched at a value exceeding £135, these will be treated as normal imports on arrival in the UK, although the seller will be able to opt to pay the import VAT (which they will not claim back) so that this is not charged to the customer when the goods are delivered, as has always been the case. Similar provisions are coming into force in the EU from 1 July 2021.

Services
Brexit has brought about very little change to the VAT treatment of services. Most overseas businesses selling services to UK businesses have not been required to charge VAT on most services in the past, and this continues to be the case.

Where the supplier is in the EU, they were previously required to obtain their UK customer's VAT number if they had one and to quote this on the sales invoice, also reporting the transaction on an EC Sales List (VIES return). This is no longer necessary. Sales of most services from the EU to UK businesses are free of VAT in the same way as the sale of the same services to customers in other non-EU jurisdictions. UK businesses purchasing such services continue to be liable for the reverse charge, but it is of no concern to the non-UK supplier whether the UK customer is compliant in this regard.

There are a few services where the position is different and where VAT is chargeable according to some other factor than where the business customer belongs. The most prominent of these services are:
- Land-related services
- Passenger transport
- Admission to events (and ancillary services relating to such admissions)
- Restaurant services and catering
- Short-term hire of a means of transport

If such a service is provided in the supplier's jurisdiction (or in the case of land-related services, the land is in the supplier's jurisdiction), VAT will be chargeable there to both business customers and customers not in business, wherever they belong. If such a service is provided in the UK by an overseas supplier, then there may be a requirement for the seller to register for VAT in the UK, although it is also possible that a business customer might be able or obliged to account for VAT under the reverse charge.

For EU-based suppliers, there is also a list of services, where VAT is not chargeable to customers not in business outside the EU (whether a consumer or an organisation or body carrying on non-business activities), as follows:
- The grant of any right (other than a right over land)
- Advertising services
- Legal services (other than those relating to land transactions), accountancy services and consultancy services
- The provision of information
- The supply of staff
- The hire of goods other than a means of transport (provided not used and enjoyed in the EU)

Prior to Brexit, an EU-based supplier will have been obliged to charge VAT to a UK customer not in business on these services. That is no longer the case, unless the service is used and enjoyed in a member state where there is an override provision for any or all of these services.

Overseas suppliers to UK customers not in business of telecoms, broadcasting or e-services are required to register for VAT in the UK and account for UK VAT on such sales. This includes both EU-based suppliers who may previously have accounted for this VAT through a MOSS (Mini One Stop Shop) registration held in their own member state and non-EU suppliers who have previously done so through MOSS returns either in the UK or in one of the remaining twenty-seven EU countries.

Further Information
This paper is an outline guide only and not designed to provide definitive advice in respect of any given case. For more detailed information, or guidance on the application of the provisions to specific situations or businesses, please feel free to contact me on 07973 135449 or my colleague Nicola Gladwell on 07733 587851.

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