

Croner Briefing - Brexit

The potential VAT consequences of Brexit

As everyone is more than aware, the UK public voted in favour of leaving the EU. Whilst the wider implications of this vote are still being discussed in the media this article sets out a brief summary of some of the key VAT issues arising from the decision.

Purchasing goods from the EU

Under the current rules, if a UK business buys goods from an EU country then it is required to account for acquisition tax when the goods arrive in the UK. For most businesses this is simply an entry on the VAT return.

Implications

Once the UK exits the EU purchases from other EU countries will become imports and import VAT and customs duty will need to be paid where appropriate (subject to any trade agreements). It will also be necessary for customs formalities to be met when the goods are imported into the UK which may result in an increased administrative burden and delays at the UK border.

Selling goods to the EU

VAT registered businesses in other EU Member States are not currently required to complete any customs paperwork when they purchase goods from UK suppliers as they are able to self-account for acquisition VAT.

Implications

UK businesses will be required to treat sales of goods to EU customers as exports and EU customers will be required to pay import VAT and customs duty when the goods are imported (although again this is subject to any trade agreements that are reached). This could make buying goods from UK suppliers less attractive not only because of the impact on cash flow but also because customers will have the additional administrative burden of customs documentation.

In addition, the UK may no longer be able to take advantage of simplifications such as triangulation, supply and installation of goods and call off stock that currently exist within the EU if the EU country has not widened the scope of these simplifications to include non-EU countries. This could result in a requirement for UK businesses to register for VAT in other Member States when they have previously not been required to do so.

However, on a more positive note UK businesses will no longer be required to complete Intrastat returns for dispatches or EC Sales lists (although they will instead be expected to complete customs declarations) and businesses will no longer be required to check if the customer's EU VAT number is correct before zero-rating a supply (subject to any trade agreements).

Distance selling

UK businesses that sell delivered goods to non-VAT registered businesses and private customers in the EU can currently take advantage of the distance selling thresholds.

Implications

Unless businesses can take advantage of any low value consignment relief rules in order to import low value goods into an EU country UK businesses may need to register for VAT in the customer's EU country if they wish to continue to sell goods to private consumers.

This may result in increased costs and administration and as a consequence smaller businesses may decide to cease to trade internationally due to the additional burden of exporting goods.

Supplies of services

UK businesses may have to take into consideration the 'use and enjoyment' rules that relate to non-EU customers if certain types of services, such as broadcasting, telecoms and e-services, are used and enjoyed in the EU.

More positively businesses who are registered for VAT under Mini One-Stop Shop (MOSS) will be able to continue to the simplification but may need to switch to the non-union scheme.

In addition, the travel sector will no longer be required to account for VAT using the Tour Operators Margin Scheme on EU travel. Although, it is likely that the UK government will decide on a different mechanism to ensure VAT is accounted for on these types of supplies.

EU refund claims

If UK businesses incur VAT in other EU countries they are currently able to use the simplified EU electronic refund system to obtain a VAT refund.

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Implications

Once the UK has left the EU, businesses may be required to use the paper based 13th Directive refund system which is much slower and where claims are more frequently challenged. UK businesses that incur substantial amounts of VAT within the EU may find it more difficult to claim EU VAT incurred.

Legislation

Once the UK has exited the EU it will no longer be bound by the Principal VAT Directive or decisions reached by the Court of Justice of the European Union (CJEU). The UK Supreme Court will have the ultimate decision regarding how UK laws should be interpreted going forward.

Implications

The UK government will be able to introduce changes to the VAT rates applicable to goods and services without needing to consider the EU legislation.

However, some CJEU decisions, such as Card Protection Plan and Halifax have provided much needed guidance to the UK tax authorities on how to deal with the VAT treatment of certain types of transactions.

Conclusion

Negotiation of the post Brexit position is expected to be extremely complex and the VAT consequences are vast. The key advantage is the greater freedom over the UK's own VAT rules on the basis that the UK will no longer be bound by EU law. However, the key challenges will be how to agree on the UK's access to the single market and how to minimise the impact on trade with the remaining Member States.

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