



## Import VAT in the UK - HMRC clarifies requirements for import VAT deduction

07 | 2020

### 1 Background

The importation of goods into the customs territory of the United Kingdom (UK) is generally subject to import VAT. The person liable for the import VAT is generally the declarant. The person who has/had the right to dispose of the imported goods when the customs declaration is/was filed has the right to deduct import VAT – subject to the further requirements. In practice, the customs declarant and the person entitled to dispose of the goods are often different. Import VAT liability and the right to deduct import VAT then diverge - intentionally or unintentionally, consciously or unconsciously. There is then a risk that the declarant will, although not entitled to do so, claim the import VAT as input VAT.

### 2 HMRC Revenue and Customs Briefs 2 (2019) and 15 (2020)

In 2019, HMRC therefore pointed out the correct treatment and typical errors (see Revenue and Customs Brief 2 (2019) and KMLZ VAT Newsletter 21 | 2019). However, HMRC did not refer to the right to dispose of the imported goods when the customs declaration is filed. Instead, title to goods should be significant to determine the person entitled to input VAT deduction. This amounted a clear restriction of the common previous understanding (and also of the statutory provisions). As a rule, the right to dispose of goods rests with the owner of those goods. However, there are many exceptions. Additionally, the right to dispose, in terms of VAT, and title, in terms of civil law, do not necessarily pass simultaneously. Frequently, the customer can already dispose of the supplied items without having the actual title to them (e.g. in the case of retention of title). Despite numerous submissions from companies and trade organizations, HMRC adhered to its opinion (see Revenue and Customs Brief 15 (2020)).



Jörg Scharrer  
Lawyer, Dipl.-Kaufmann

+49 (0) 89 217 50 12-33  
joerg.scharrer@kmlz.de

HMRC's view created considerable legal uncertainty for supplies of goods to the UK. In particular, the question arose as to who is entitled to deduct import VAT on supplies under Incoterm DAP [named place UK] and on supplies held under retention of title. Some UK advisers expressed concern that, if HMRC's view were to be strictly interpreted, supplies under Incoterm DAP [named place UK] could stipulate a registration obligation.

### 3 Clarification in the HMRC Internal Manual

HMRC has now taken a big step backwards towards the previous understanding (see the amendment to Internal Manual VIT13300 of 26 February 2021). HMRC formally maintains the requirement of ownership. However, ownership is to be understood in terms of VAT. "When we refer to the owner as having ownership of the goods, this needs to be seen specifically in the VAT context of ownership being 'the right to dispose of goods as owner'." However, HMRC requires that the customer obtains ownership (title to the goods) in the further course of the transaction. Insofar as the Revenue and Customs Briefs from 2019 and 2020 referred to "title to the goods", the Internal Manual now uses "ownership" in the aforementioned sense.

### 4 Consequences for the practice

The clarification eliminates a substantial part of the legal uncertainty caused by the 2019 and 2020 instructions, particularly for "normal" supplies of goods to the UK. If the customer acts as customs declarant, it is liable for the import VAT and – if the other requirements are met – entitled to deduct it as input VAT. In particular, supplies carried out under a retention of title clause and under Incoterm DAP [named place UK] benefit from the clarification. The concerns of a VAT registration obligation should also be obsolete.

However, constellations in which a supply is assumed for VAT purposes, despite the absence of a transfer of title, (e.g. in certain leasing situations) remain critical. In these cases, in HMRC's view, the right to deduct import VAT remains with the supplier in its capacity as the owner. This can result in further administrative work for the supplier. This is because import VAT deduction requires a notification in the name of the supplier (C79 certificate). Since the C79 certificate is always issued to the declarant, the supplier must also act as the declarant. The import customs declaration by the supplier can reclassify the cross-border supply as a local, taxable supply in the UK (cf. Sec. 7 (6) of the UK VAT Act). The supplier would then be obliged to register in the UK. HMRC's view literally turns VAT treatment upside down in such cases.

Despite the clarification on the deduction of import VAT, there will continue to be complex issues surrounding importation, VAT and the deduction of import VAT. Previously, there were interdependent supply chains between the UK and many EU Member States. These need to be rethought under the additional customs regulations that now apply. The above example of import VAT deduction shows that even supposedly simple issues can give rise to further questions. The additional administrative effort and the additional risks can make previously profitable business now unprofitable.

Taxable persons should act with due diligence. Very few economies of scale exist when it comes to customs and VAT. The essential effort required for large and small volume transactions is very similar – unlike the risk. Standard and large volume transactions can usually be managed safely after customs and VAT checks. In the case of special and small volume transactions however, the required customs and VAT effort can result in reduced profitability.