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VAT'S UP
UMSATZSTEUER NEWSLETTER

Brexit: Amendments to the UK VAT Act after the UK's departure from the EU

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1 Facts

29.03.2019 is fast approaching. Whether and how the UK will leave the EU on this date remains to be seen. A No-Deal-Brexit is still possible. The British legislator's amendments to the Value Added Tax Act 1994 and the Taxation (Cross-border Trade) Act 2018 were already drafted back in September 2018. Several Statutory Instruments, (most recently SI 2019/513 of 08.03.2019), prepared by the tax authorities and the Ministry of Finance in the UK provide for additional adjustments to be made to the primary and secondary British VAT law, post-Brexit. The purpose of course being to ensure that the British VAT regime remains operational after Brexit. However, most of the rules are only intended to enter into force in the case of a No-Deal-Brexit. To date, the mentioned instruments have essentially been regulating the following points.

2 Conditional changeover arrangements

Of course, the changes are mainly adaptations which will meet the needs of the changed status of the UK in relation to the EU. Rules and definitions concerning intra-Community transactions will be deleted without replacement. Additionally, the regulations on information exchange processes with the EU (Intrastat, EC Sales List, distance sale, MOSS) will be affected, as the UK will no longer have the right to access the relevant EU systems after Brexit. An exception to this is the VIES system for querying the validity of VAT-ID-Numbers, to which every taxable person has access. Only British VAT–ID-Numbers should no longer be able to be validated. At the same time, customs law and VAT on imports to the UK, as well as regulations on exports from the UK will be adapted. Transition periods, as regards the point in time tax arises, and legal bases for the enactment of further regulations, will be established.

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3 Introduction of deferred taxation of import VAT

In order to avoid cash flow disadvantages resulting from the reclassification of intra-Community acquisitions as imports after Brexit, it is intended that a deferred taxation of import VAT will be introduced. With the exception of parcels with a value of up to GBP 135, UK registered taxable persons will not be required to pay import VAT immediately upon importation from the date of departure. Rather, import VAT will only have to be reported when UK registered taxable persons submit their VAT return to be processed but will not have to be paid, at least for those who are entitled for full input VAT deduction. This means that the status of deliveries from the EU will remain the same from a VAT financing perspective and an improvement will be seen as regards deliveries from other non-EU countries.

4 Method for determining the deductible proportion of the input VAT

The regulation, as regards the method for determining the deductible proportion of input VAT stands out because it will also become effective in the case of a regulated exit. A partial, special exemption method (PESM) for determining the deductible proportion of input VAT for companies with mixed output transactions (i.e. VAT-exempt financial transactions that are harmful to input VAT) will remain valid after Brexit, without any need for a new application or HMRC approval.

5 Remuneration of input VAT incurred prior to the date of departure

EU taxable persons can claim a refund of all UK input VAT incurred up to and including the date of departure under existing EU rules. However, as of the date of departure, input VAT refund applications can no longer be submitted via the electronic portals of the country of residence. In fact, this situation will apply even before the actual departure date (see KMLZ Newsletter 13/2019). All applications submitted after the departure date must therefore be submitted manually. A new HMRC form, Form VAT65A (EU), together with additions to the instructions (VAT Notice 723A) have already been drafted for this purpose and will be published on the HMRC website.

6 Fulfillment Houses

Anyone providing fulfillment services will require a permit for the importation of goods, as has been the case for non-EU countries since April 2018. Here, a nine-month transitional period is planned for applications.

7 What is missing?

A large number of information sites provided by HMRC concerning the criteria to be observed in the case of a No-Deal-Brexit are only addressed to tax payers resident in the UK. Non-resident taxable persons registered for VAT purposes in the UK are currently not being provided with any information tailored to them. There is no specific statement as regards registration for VAT purposes and tax numbers, e.g. as regards the question of whether these remain valid without any changes. Is it also not clear whether EU taxable persons will be able to handle imports directly in the UK under their existing EORI numbers or whether, in the future, they will require UK-based representatives for this purpose. It is also unclear whether these EU taxable persons will have to apply for their own new British EORI numbers. The current regulations are not yet sufficient to enable the British VAT regime to keep functioning after Brexit. In the case of a disordered Brexit, there will still be a need for clarification with regard to the VAT obligations of non-established taxable persons who are required to be registered in the UK. Even today, the time taken by HMRC to process registrations is excessively long. An improvement in this processing time would be extremely unlikely in the case of a No-Deal-Brexit on 29.03.2019. In the meantime, it is to be hoped that a pragmatic solution will be found for elementary questions such as VAT registration.

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