



VAT NEWSLETTER

## Brexit: Federal Ministry of Finance letter on the German VAT law following a “hard” Brexit

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### 1 Facts

In its letter dated 08.04.2019, the German Ministry of Finance (BMF) sets out how the German VAT law is to be applied in case of a no deal Brexit. If and when a “hard” Brexit may happen, is still unclear. As long as this scenario is not excluded, the letter serves as guidance. From the date of the “hard” Brexit, the UK will be a third country with all of the VAT consequences that this entails. Below is a short outline based on the example of 12.04.2019 being the “hard” Brexit date.

### 2 Consequences for the supply of goods

Intra-Community supplies to the UK will be exports, intra-Community acquisitions from the UK will be imports with all of the usual customs consequences. Movements of goods across the border for processing - previously irrelevant for VAT purposes - will have to be declared under customs law. Intra-company transfers will become irrelevant for VAT purposes but will need to be recorded under customs law.

### 3 Consequences for the supply of services

Use and Enjoyment rules (sec. 3a para. 6, 8 of the German VAT Act) will apply to services which are rendered in the UK, including the transport of goods, work carried out on/assessment of movable objects, supplies of travel services and event services for trade fairs and exhibitions. These said services may be taxable in the UK. On the other hand, individual supplies of services rendered by UK taxable persons will be taxable in Germany in circumstances where the supplies are intended for use and enjoyment in Germany. Services that continue to be taxable in the UK at the recipient's place of establishment in accordance with Art. 44 EU VAT Directive must no longer be reported in the EC Sales List. The supply of brokerage services of certain UK transactions will, in future, be zero-rated (sec. 4 No. 5 of the German VAT Act).



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#### **4 Transitional arrangement for supplies of goods taking place around the exit date**

As regards the VAT allocation of cross-border supplies of goods around the departure date, the following will apply:

- Outbound: If the transport of goods from Germany to the UK commences prior to 13.04.2019, a zero-rated intra-Community supply will be deemed to have taken place. The accounting and documentary evidence must be retained for an intra-Community supply. It will also need to be included in the EC Sales List for April 2019. If the supplier is able to prove that the goods have left EU territory only after 12.04.2019, the delivery will be treated as a zero-rated export. In this instance the supply will no longer need to be included in the EC Sales List.
- Inbound: If a transport of goods starts in the UK prior to 13.04.2019 and ends in Germany after 12.04.2019, it will be an intra-Community acquisition. If the taxable person furnishes proof for the taxation of the import of these goods after 12.04.2019 (import VAT assessment), the acquisition will not be subject to VAT.

#### **5 Transitional arrangement for long-term services that last beyond the exit date**

The point in time at which a supply is executed remains decisive for VAT treatment of the services rendered beyond the date of withdrawal (continuous supplies). In the case of temporary continuous supplies, the supply is executed upon termination of the underlying legal relationship. If the supply starts prior to 13.04.2019 and ends after 12.04.2019, the time of termination is decisive for the assessment of the entire supply. This applies mutatis mutandis to partial supplies.

#### **6 Consignment stock**

If goods are transferred to a German or British consignment stock prior to 13.04.2019 and removed after 12.04.2019, the storage will be considered as an intra-Community transfer/acquisition. The subsequent delivery will be subject to the general provisions of the German VAT Act or the UK VAT Act applicable at the time of supply. With the new Federal Fiscal Court case law, the following also applies: If the recipient is already known at the beginning of the transport to the UK taking place on a date prior to 13.04.2019, this supply will qualify as an intra-Community supply. Customs and import VAT regulations remain unaffected.

#### **7 Procedural adjustments MOSS**

In the case of declarations of transactions to private UK customers, within the scope of the MOSS procedure, it should be noted that all supplies made by 31.03.2019 (=Q1/2019) and all supplies made by 12.04.2019 (=Q2/2019) can still be declared through the Portal of the German Federal Tax Office (BZSt), provided that the return is submitted in good time (acc. to BZSt, no later than 11.04.2019) and forwarded to the UK. After this date, the transactions carried out must be declared in accordance with the rules then in force in the UK. Conversely, corresponding transactions by UK-based companies must also be reported in good time on the UK portal so that they can be forwarded to the German tax authorities prior to 13.04.2019. After that date the UK taxable person must report within the general taxation procedure (full registration in Germany) if it does not have a fixed establishment in the EU that entitles it to MOSS reporting.

#### **8 Procedural adjustments refund procedure, marketplace liability, VAT-ID-Nos query**

As regards the input VAT refund procedure, please see our Newsletter 13/2019 with the provision to adjust the actual Brexit date. It will no longer be possible to query a VAT-ID-No from the UK (prefix "GB") at the BZSt-Portal after 12.04.2019. With regard to the liability of online marketplace operators for UK traders a new deadline is likely to be communicated until the certificate in accordance with sec. 22f para. 1 sentence 2 of the German VAT Act must be available.